Stroud's Judicial Dictionary of Words and Phrases

Second Cumulative Supplement

Ninth Edition

Daniel Greenberg
Counsel for Domestic Legislation, House of Commons; General Editor, Westlaw UK Annotated Statutes and Insight Encyclopaedia

SWEET & MAXWELL

THOMSON REUTERS

Published in 2018 by Thomson Reuters, trading as Sweet & Maxwell. Registered in England & Wales, Company No.1679046. Registered Office and address for service: 5 Canada Square, Canary Wharf, London, E14 5AQ.

For further information on our products and services, visit *www.sweetandmaxwell.co.uk*

Typeset by Letterpart Limited, Caterham on the Hill, Surrey, CR3 5XL.

Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon, CR0 4YY.

No natural forests were destroyed to make this product: only farmed timber was used and re-planted.

A CIP catalogue record of this book is available from the British Library.

ISBN: 978-0-414-07006-6

Preface

As with recent editions of *Stroud*, the intention is to provide annual cumulative supplements noting new judicial and statutory definitions.

The editorial policy remains as stated in the preface to the main work. In particular, *Stroud* is a judicial dictionary, and not a legal dictionary: it is dependant, as it always has been, on the courts and legislatures for the provision of definitions. The result is that there will be expressions of importance to lawyers or related professions that do not feature in *Stroud* because their definition has not fallen to be considered in a decided case or glossed by statute. Equally, there are many expressions that would have no place in a legal dictionary – not being terms of art forming part of the mechanism or structure of the law – that have been defined by the courts or legislature in a way likely to be helpful to lawyers and related professions and that are therefore included in *Stroud*.

In this respect *Stroud* sees itself as a companion work to *Jowitt's Dictionary of English Law*, which aims to define terms forming part of the structure of the law whether or not they have received recent judicial or statutory definition.

I gratefully acknowledge the assistance of my son Yisroel Greenberg in contributing statutory material for this supplement.

This supplement is up to date to the end of June 2018.

Stroud has benefited greatly over the years from comments and suggestions provided by readers. All communications are always most gratefully received and should be sent to the publishers in the first instance.

Daniel Greenberg
London
June 2018

A

ABNORMAL OCCURRENCE. "I would accept the charterers' submission recorded in sub-para 44(iii) that an 'abnormal occurrence' has its ordinary meaning. It is not a term of art. As stated in that sub-paragraph, '[a]n occurrence was just an event—something that happened on a particular time at a particular place in a particular way. "Abnormal" was something well removed from the normal. It was out of the ordinary course and unexpected. It was something which the notional charterer would not have in mind.'... It is to my mind important to note the emphasis in the cases upon the meaning of the expression 'abnormal occurrence'. I would accept the charterers' submission in para 44(iii) of the Court of Appeal's judgment that 'abnormal' is something well removed from the normal. It is out of the ordinary course and unexpected. It is something which the notional charterer or owner would not have in mind." *Gard Marine and Energy Ltd v China National Chartering Company Ltd* [2017] UKSC 35.

ABUSE. Stat. Def., Housing Act 1985 s.81B(2C) inserted by Secure Tenancies (Victims of Domestic Abuse) Act 2018 s.1.

ACCESSORY. "Nor is it a natural meaning of the word 'accessory'. To take the UT's example, a bicycle bell can fairly be described as an 'accessory' to the bicycle, even if does not add to its range of functions. 41. A better answer is one which distinguishes more clearly between the printer itself, and the materials used by it. Ink and paper are both necessary for the printer to do its work. But one would not naturally describe either as a 'part or accessory' of the printer, any more than petrol would be regarded as a 'part or accessory' of a car. The words 'particular service relative to' its function need to be more narrowly construed as referring to services directly connected with the mechanisms or processes by which it performs that function. As Advocate-General Kokott said in *Turbon 2* (para 72), the ink though 'suitable solely for use' with this type of printer, was not essential for its 'mechanical and electronic functioning'. This approach is also consistent with the ultimate conclusion of the court in *Turbon* 2. Although the cartridge (unlike the ink) played a part in the mechanical functioning of the printer, its dominant or 'essential' function was to supply it with ink." *Amoena (UK) Ltd v Revenue and Customs* [2016] UKSC 41.

ACCOMMODATION. See SETTLED ACCOMMODATION.

ACT OF STATE. For discussion of the nature and scope of the doctrine see *Rahmatullah (No 2) v Ministry of Defence* [2017] UKSC 1.

ACT OR NEGLECT."Specifically, the issue is whether the term 'act' in the phrase 'act or neglect' means a culpable act in the sense of fault or whether it means any act, whether culpable or not.... In my judgment, since clause 8 envisages a 'more or less mechanical apportionment of liability', the word 'act' in clause 8(d) would reasonably be understood to bear its ordinary and natural meaning of any act without regard to questions of fault. Since clause 8(d) is a sweeping up provision the sphere of risk cannot be identified. Instead, the justification in clause 8(d) for apportioning a cargo

claim 100% to a party is that the claim arose out of that party's act. 'Neglect' is used to encompass claims which arise, not out of a party's act, but out of a party's failure to act. I accept that 'neglect' can sensibly only mean a failure to do that which the party ought to do. But by contrast 'act' can sensibly mean any act, whether culpable or not." *Transgrain Shipping (Singapore) PTE Ltd v Yangtze Navigation (Hong Kong) Co Ltd & Anor* [2016] EWHC 3132 (Comm).

"The issue in this case is whether the word 'act' in the phrase 'act or neglect' means a culpable act in the sense of fault or whether it means any act, whether culpable or not. The question arises as a matter of construction of clause 8 of the Inter-Club Agreement 1996 ('the ICA') an agreement made between Protection and Indemnity Associations (or 'Clubs') in relation to liability for cargo claims as between shipowners and charterers. It arises on an appeal from an award of arbitrators.... For my part I agree both with Teare J and the arbitrators that the word 'act' in the context of the ICA should be given its natural meaning, there is no need to confine it to 'culpable act' and I would dismiss this appeal." *Transgrain Shipping (Singapore) Pte Ltd v Yangtze Navigation (Hong Kong) Co Ltd* [2017] EWCA Civ 2107.

ACTUAL OCCUPATION. "The authorities seem to me to support the following propositions as regards 'actual occupation':

i) The word 'actual' in 'actual occupation' 'emphasises that what is required is physical presence, not some entitlement in law' (*Williams & Glyn's Bank Ltd v Boland* [1981] AC 487, at 505, per Lord Wilberforce);

ii) The nature of the relevant property can matter. 'Occupation', Lord Oliver explained in *Abbey National Building Society v Cann* [1991] AC 56 (at 93), is a 'concept which may have different connotations according to the nature and purpose of the property which is claimed to be occupied'. In a similar vein, Arden LJ observed in *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] EWCA Civ 151, [2002] Ch 216 (at paragraph 80), 'What constitutes actual occupation of property depends on the nature and state of the property in question';

iii) 'Occupation' involves 'some degree of permanence and continuity which would rule out mere fleeting presence' (to quote again from Lord Oliver in *Abbey National Building Society v Cann*, at 93). Lord Oliver went on to say (at 93), 'A prospective tenant or purchaser who is allowed, as a matter of indulgence, to go into property in order to plan decorations or measure for furnishings would not, in ordinary parlance, be said to be occupying it, even though he might be there for hours at a time'. On the other hand, '[r]egular and repeated absence' can be consistent with 'actual occupation': see *Kingsnorth Finance Co Ltd v Tizard* [1986] 1 WLR 783, at 788;

iv) 'Occupation' does 'not necessarily ... involve the personal presence of the person claiming to occupy' (Lord Oliver in *Abbey National Building Society v Cann*, at 93). In the *Cann* case, Lord Oliver expressed the view (at 93) that a 'caretaker or the representative of a company can occupy ... on behalf of his employer'. In *Lloyds Bank Plc v Rosset* [1989] Ch 350, Nicholls LJ (in the Court of Appeal) considered that 'the presence of a builder engaged by a householder to do work for him in a house is to be regarded as the presence of the owner when considering whether or not the owner is in actual occupation' (see 378). In *Kling v Keston Properties Ltd* (1983) 49 P&CR 212, Vinelott J considered the plaintiff to have been in 'actual occupation' of a garage in which his wife's car had been confined because the door was blocked and thought that the result would probably have been the same even if the car had not been physically trapped: the plaintiff, Vinelott J suggested (at 219), 'should be treated as being in

continuous occupation of the garage while he was using it in the ordinary course for the purpose for which the licence was granted, that is, for garaging a car as and when it was convenient to do so';

v) In contrast, 'actual occupation' by a licensee on his own behalf does not represent 'actual occupation' by the licensor (see *Strand Securities Ltd v Caswell* [1965] Ch 958, at 980–981 and 984, and *Lloyd v Dugdale* [2001] EWCA Civ 1754, [2002] 2 P&CR 13, at paragraph 45). Nor does receipt of rents and profits now suffice to give protection. Section 70(1)(g) of the Land Registration Act 1925, the predecessor of paragraph 2 of Schedule 3 to the 2002 Act, referred to the rights of a person 'in actual occupation of the land or in receipt of the rents and profits thereof'. Nothing comparable to the italicised words is to be found in the 2002 Act;

vi) Even in the case of a house, 'occupation' need not involve residence. In *Lloyds Bank Plc v Rosset*, Nicholls LJ said (at 377) that he could 'see no reason, in principle or in practice, why a semi-derelict house … should not be capable of actual occupation whilst the works proceed and before anyone has started to live in the building'. See too *Thomas v Clydesdale Bank Plc* [2010] EWHC 2755 (QB);

vii) Occupation needs to be distinguished from mere use. In *Chaudhary v Yavuz* [2011] EWCA Civ 1314, [2013] Ch 249, use of a metal staircase and landing for the purpose of passing and repassing between some flats and the street was held not to amount to 'actual occupation'. Such activity, Lloyd LJ said (at paragraph 30), is 'use, not occupation';

viii) As Mummery LJ observed in *Link Lending Ltd v Hussein* [2010] EWCA Civ 424 (at paragraph 27), when determining whether a person is in 'actual occupation':

'The degree of permanence and continuity of presence of the person concerned, the intentions and wishes of that person, the length of absence from the property and the reason for it and the nature of the property and personal circumstances of the person are among the relevant factors';

ix) An interest belonging to a person in 'actual occupation' will be protected only if and so far as it relates to land of which he is in actual occupation. This is evident from the wording of paragraph 2 of Schedule 3 to the 2002 Act, which in this respect differs significantly from that of section 70(1)(g) of the Land Registration Act 1925;

x) The date on which a person must have been in 'actual occupation' to rely on paragraph 2 of Schedule 3 to the 2002 Act is the date of the disposition, i.e. completion." *Baker v Craggs* [2016] EWHC 3250 (Ch).

ADEQUATE INDEMNITY. "The phrase, 'an adequate indemnity' has a less definitive meaning than 'full reimbursement'. The French text of the judgment speaks of 'une indemnisation adéquate' and the German text refers to 'eine angemessene Entschädigung'. In both languages, as in English, the words chosen can support a range of meanings, including the meaning of 'adequate compensation' or 'reasonable redress', which are not tied into the idea of full compensation for the time value of money." *Littlewoods Ltd and others v Commissioners for Her Majesty's Revenue and Customs* [2017] UKSC 70.

ADJOURNED. "The Court of Appeal, in ordering that any further enforcement of the award should be 'adjourned' under section 103(5) pending determination of the section 103(3) proceedings, was, therefore, misusing the word in the context of section 103(5). Of course, any decision of an issue raised under section 103(2) or (3) may take a court a little time, even if it is only while reading the papers, or adjourning overnight or for a number of weeks, in order to consider and take the decision. But that does not

mean that 'the decision' was being adjourned within section 103(5). On the contrary, delays of this nature are all part of the decision-making process." *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation* [2017] UKSC 16.

ADULT DOG. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

ADVISORY COMMITTEE (ECCLESIASTICAL). Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

AIR NAVIGATION ORDER. Stat. Def., Space Industry Act 2018 s.69.

AIR SOURCE HEAT PUMP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

AIRCRAFT. Stat. Def., Laser Misuse (Vehicles) Act 2018 s.3.

ANAEROBIC DIGESTION. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

ANTHROPOGENIC EMISSIONS. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

ANY. "Ms Slow prays in aid the decision of Eve J in *Clarke-Jervoise v Scutt* [1920] 1 Ch 382. That case concerned a tenancy agreement in which the tenant agreed not to plough 'any grass land'. Eve J construed that phrase broadly as meaning all land covered in grass either at the date of the demise or subsequently. He therefore treated the word 'any' as meaning 'all'. I readily understand, and respectfully agree with, the decision in that case. But the judge arrived at his conclusion specifically by reference to the context in which the word 'any' appeared: see page 388. He was not saying that in every context 'any' means 'all'." *Balfour Beatty Regional Construction Ltd v Grove Developments Ltd* [2016] EWCA Civ 990.

APPEAL. "In its conventional connotation, an 'appeal' (if it is not qualified by any words of restriction) is a procedure which entails a review of an original decision in all its aspects. Thus, an appeal body or court may examine the basis on which the original decision was made, assess the merits of the conclusions of the body or court from which the appeal was taken and, if it disagrees with those conclusions, substitute its own. Judicial review, by contrast, is, par excellence, a proceeding in which the legality of or the procedure by which a decision was reached is challenged. It is, of course, true that in the human rights field, the proportionality of a decision may call for examination in a judicial review proceeding. And there have been suggestions that proportionality should join the pantheon of grounds for challenge in the domestic, non-human rights field – see, for instance, *Kennedy v Charity Commission (Secretary of State for Justice intervening)* [2014] UKSC 20; [2015] AC 455, paras 51 and 54; and *Pham v Secretary of State for the Home Department (Open Society Justice Initiative intervening)* [2015] UKSC 19; [2015] 1 WLR 1591, paras 96, 113 and 115; and *Keyu v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69; [2016] AC 1355, paras 133, 143 and 274-276. But an inquiry into the proportionality of a decision should not be confused with a full merits review. As was said in *Keyu* at para 272:

'… a review based on proportionality is not one in which the reviewer substitutes his or her opinion for that of the decision-maker. At its heart, proportionality review requires of the person or agency that seeks to defend a decision that they show that it was proportionate to meet the aim that it professes to achieve. It does not demand that the decision-maker bring the reviewer to the point of conviction that theirs was the right decision in any absolute sense.'

21. Judicial review, even on the basis of proportionality, cannot partake of the nature of an appeal, in my view. A complaint of discrimination illustrates the point well. The task of any tribunal, charged with examining whether discrimination took place, must be to conduct an open-ended inquiry into that issue. Whether discrimination is in fact found to have occurred must depend on the judgment of the body conducting that inquiry. It cannot be answered by studying the reasons the alleged discriminator acted in the way that she or he did and deciding whether that lay within the range of reasonable responses which a person or body in the position of the alleged discriminator might have had. The latter approach is the classic judicial review investigation." *Michalak v General Medical Council and others* [2017] UKSC 71.

APPROPRIATE. "In the judgment of this court the word 'appropriate', as used in section 13A, does not require any gloss. What however can be accepted is that it is inherent in section 13A that the making of a compliance order must be justified. Such an order therefore can only be made if there is proper reason for so doing. How an order of this kind is to be justified will depend, when the court in question is assessing what is appropriate, on the facts and circumstances of the individual case. Nevertheless, it can confidently be said that for this purpose considerations of proportionality must be involved in the decision-making process. They must be involved just because such considerations are themselves inherent in the legislative use of the word 'appropriate' in section 13A. When set in the context of compliance orders in general and travel restrictions under subsection (4) in particular. A travel restriction involves a restriction on freedom of movement, an important right in itself. Moreover, there will be cases where a travel restriction may involve perspective interference with the enjoyment of private or family life or the enjoyment of property. Thus, in considering whether or not to make an order imposing a travel restriction, under section 13A(4), the court has to strike a balance between the need to ensure that the confiscation order in question is effective and the risk of that confiscation order being rendered ineffective if no travel restriction is made, on the one hand, and the impact upon the individual defendant, if a travel restriction is made on the other hand. This court does not think it likely to be helpful to give any further generalised guidance to Crown Court judges, or to seek to enumerate, if that were possible, factors likely to be relevant, in assessing whether or not it is appropriate to make a compliance order containing a travel restriction under section 13A. This is just because, as we have said, each case must be the fact and circumstance specific. But what must always be borne in mind for the purpose of considering making an order under section 13A is that the 'appropriateness' of making such an order has to be geared towards the purpose of making the confiscation order in question effective." *Pritchard, R v* [2017] EWCA Crim 1267.

"The word 'appropriate' generally confers a very broad latitude and discretion. However the word takes its meaning from the context." *The Department of Justice v Bell* [2017] NICA 69.

APPROVED PREMISES. "Approved premises are premises which have been approved by the Secretary of State under the Offender Management Act 2007, among other things 'for, or in connection with, the supervision or rehabilitation of persons convicted of offences' (section 13(1)(b)). Under section 2 of that Act, the Secretary of State is responsible for ensuring that sufficient provision is made throughout England and Wales for 'probation purposes'. These are defined in section 1(1)(c) to include 'the supervision and rehabilitation of persons charged with or convicted of offences'.

Under section 1(2)(b) to (d), this includes, in particular, assisting in the rehabilitation of offenders being held in prison, supervising persons released from prison on licence and providing accommodation in APs. Under the current Offender Management Act 2007 (Approved Premises) Regulations 2014 (SI 2014/1198), Regulation 6(1)(a)(iii), among the general duties of providers of APs is a requirement that 'at least two members of staff are present on the premises at all times' (the same was required by the predecessor Regulations (SI 2008/1263), Regulation 7(1)(a)(iii)). Assuming three eight-hour shifts in a day, this means that each AP must have a minimum of six staff no matter how many people are housed there.

10. According to Probation Circular 37/2005, The Role and Purposes of Approved Premises, APs are 'a criminal justice facility where offenders reside for the purposes of assessment, supervision and management, in the interests of protecting the public, reducing re-offending and promoting rehabilitation'. Their 'core purpose' is 'the provision of enhanced supervision as a contribution to the management of offenders who pose a significant risk to the public'. They cater for male and female prisoners who are assessed as 'very high' or 'high' risk, but in order to increase take-up APs also cater for female 'medium' risk offenders such as the appellant. Although APs also cater for people on bail or serving a community sentence, the majority of residents are there because of the conditions of their release on licence from prison. They have to abide by a curfew and a code of conduct and any breach of the conditions of their licence can result in recall to prison." *Coll, R. (on the application of) v Secretary of State for Justice* [2017] UKSC 40.

ARCHES COURT OF CANTERBURY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.9.

ARTICLE. Stat. Def. ("includes anything affixed to land or a building, and a reference to an article includes a reference to part of an article"), Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

ASBESTOS DUST. "The whole point turns on the true construction of the term 'asbestos dust' as it appears in the 1969 Regulations. As a matter of simple English it would seem clear that the phrase does not mean, or at least does not necessarily mean, 'dust containing only asbestos fibres'. Nor does it mean, or at least does not necessarily mean, 'dust which consists mostly of asbestos fibres' nor 'dust which contains any asbestos fibre'. The importance of the distinctions between the various phrases varies according to the relevant circumstances in which they may be used. Whatever meaning the phrase may have in simple English, however, the court is concerned only with the interpretation of 'asbestos dust' as it has been defined by the draftsman, and adopted with parliamentary authority as subordinate legislation. Where a phrase is defined in a statute or statutory regulations there is no room for an interpretation which subtracts any significant degree of meaning from such a definition, nor for one which puts any unnecessary gloss upon it. The definition of 'asbestos dust' in the Asbestos Regulations 1969, in Regulation 2(3), is: '… dust consisting of or containing asbestos to such an extent as is liable to cause danger to … health ….' There is, it seems to me, no doubt that that definition might include both dust which consists simply of asbestos and nothing else, and dust which contains some asbestos but also contains dust of any other substance. It would have been perfectly possible for the word 'any' to have been inserted after the word 'containing' and to have omitted the whole of the following phrase 'to such an extent as is liable to cause danger to the health of employed persons.' However, the draftsman did not leave the

definition in such simple terms, and since that was not done, it is necessary to understand what the actual definition means." *Heynike v 00222648 Ltd (Formerly Birlec Limited) (Fatal Mesothelioma)* [2018] EWHC 303 (QB).

ATTENDANCE (AT MEETING). Stat. Def., Housing Administration (England and Wales) Rules 2018 rule 1.3.

ATTRIBUTABLE TO. "The starting point is not, I think, in the end helped by a debate about the meaning of the words 'attributable to'. I was referred to a number of dictionaries and none of them provided a definition of 'attributable to' which seemed to me to resolve the question of statutory construction or interpretation which I am faced with. It is true that the Ombudsman relied on a dictionary definition of 'caused by' or 'able to be ascribed to' and, as a general synonym for 'attributable to' I see no particular problem with that. In the dictionaries I was referred to, some refer to causation and some refer to ascribing something to something else, but I do not regard 'attributable' as in itself a difficult or ambiguous word – it means what the dictionaries say it means: something is attributable to something else if it can properly or reasonably or sensibly be ascribed to something else – and I am content to proceed on the basis that that is the normal meaning of the phrase 'attributable to'. What, however, the dictionary cannot shed any light on is the normal meaning of the phrase 'attributable to pensionable service' and that is the phrase which is to be interpreted in para.26(2)(b) and that is, I think, a phrase that has a conventional or normal meaning in the practice of those who practise in the field of occupational pensions." *Beaton v The Board of the Pensions Protection Fund* [2017] EWHC 2623 (Ch).

AUDITED SALES REPORT. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

B

BARRATRY. "I would accordingly define barratry as (i) a deliberate act or omission by the master, crew or other servant of the owners (ii) which is a wrongful act or omission (iii) to the prejudice of the interests of the owner of the ship or goods (whether or not such prejudice is intended) (iv) without the privity of the owner. In order for the act or omission to qualify as wrongful for the purposes of (ii) it must be (a) what is generally recognised as a crime, including the mental element necessary to make the conduct criminal; or (b) a serious breach of duty owed by the person in question to the shipowner, committed by him knowing it to be a breach of duty or reckless whether that be so." *Glencore Energy UK Ltd v Freeport Holdings Ltd* [2017] EWHC 3348 (Comm).

BASIC HOURS. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

BIOGAS PRODUCTION PLANT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

BIOMETRIC DATA. Stat. Def., Data Protection Act 2018 s.205.

BIRTH AND ADOPTION GRANT. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

BLACK CARBON. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

BOVINE ANIMAL. Stat. Def. ("includes bison and buffalo (including water buffalo)"), Transmissible Spongiform Encephalopathies (England) Regulations 2018 reg.2.

BRANDED MEDICINE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

BUILDING. Stat. Def. ("includes a structure or erection, and a reference to a building includes a reference to part of a building"), Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

BUILT UPON. "The sole issue is whether or not these lands are 'built upon', and therefore are excluded from the right of pre-emption granted by section 128. Neither counsel was able to put forward any evidence, historical or otherwise, to explain these three exceptions to the right of pre-emption under section 128. Mr Humphreys QC tentatively suggested that most land acquired by the railways would have been agricultural. It would have been too demanding to offer superfluous land back to every householder in a town. But that does not explain the exceptions for 'land for building purposes' or 'lands built upon' which may well have singular owners. Mr Dunlop suggested that the right to pre-emption did not apply to lands built upon because of the capital investment that had been expended. But this does not necessarily apply to lands within a town and certainly not to 'land for building purposes'. In any event, any party seeking to acquire any lands 'built upon' would have to pay the market price which will normally reflect the capital investment of the promoter. Both counsel agreed that the relevant legal authorities do not provide any reason as to why 'lands built upon' had been excluded from the right of pre-emption under section 128.

[48] The Oxford English Dictionary defines build as 'construct (something, typically something large) by putting parts of material together over a period of time'. The word comes from the old English 'bydlan' which is derived from 'dwelling' which is of Germanic origin. . . . There are certain cases in which it will be obvious whether or not the land is 'built upon'. It should also be clear that a lake which has been created naturally by the damming of a river could never be described as land which has been 'built upon'. What the position is when the lake is created artificially by damming a valley and impounding the river(s) depends on all the circumstances of the construction. The answer to the question as to whether or not it is land 'built upon' must necessarily be fact specific. For example Turnberry golf course was used as an airport during the Second World War. It had a control tower and aeroplanes landed on what previously were the fairways of the golf course. Although the land was being used as an airport, it could never be described as land which had been 'built upon'. Belfast City Airport, in its present situation comprises, a main airport building with runways which have been constructed in tarmac on the ground. There is no difficulty in saying that Turnberry golf course as used during the war was not 'built upon' even though it was being used as an airport and there was a control tower. Further, there is no difficulty in saying that Belfast City Airport as it is presently constituted, is land which it is 'built upon' given the construction of the runways and buildings on the airport land.

I had the opportunity of visiting Portavo reservoir and of inspecting the works which had been constructed upon the reservoir lands. I also was able to take into account the fact that some of those structures are necessarily subterranean. I do not consider that what I observed could be considered by any reasonable observer to be lands which were 'built upon'. I do not consider a manmade lake together with the buildings which I observed had been constructed thereon, and which occupy a very small percentage indeed of the total land space together with the underground works, are sufficient to allow NIW to claim that the lands are 'built upon' and excluded from the pre-emption obligation under section 128. If I was in any doubt as to whether the pre-emption obligation under section 128 extended to the reservoir lands, which I am not, and there was an ambiguity, then this should be construed against NIW." *Portavo Estates Ltd v Northern Ireland Water* [2017] NICh 2.

BURDEN. Stat. Def., Legislative Reform Measure 2018 s.1.

BUSINESS. Stat. Def. ("includes any trade or profession"), Data Protection (Charges and Information) Regulations 2018 reg.1.

BUSINESS DAY. Stat. Def., Housing Administration (England and Wales) Rules 2018 rule 1.3.

C

CANVASS OR SOLICIT. "There was no dispute, and there were no submissions, about the proper construction of the terms 'canvass' and 'solicit'. Both seem to me to require a positive act on the part of the covenantor to approach the named individuals with a view to persuading them or suggesting to them that they leave the employment of the covenantee and instead to work for, or with, the covenantor. It is clear as a matter of ordinary language that a person (A) does not canvass or solicit another person (B) merely because B approaches A and, as a result of that approach, A employs B. To 'canvass' or 'solicit', A must make the first move." *Rush Hair Ltd v Gibson-Forbes* [2016] EWHC 2589 (QB).

CARRIER AIRCRAFT. Stat. Def., Space Industry Act 2018 s.2.

CASE LAW. See RETAINED CASE LAW; RETAINED DOMESTIC CASE LAW; RETAINED EU CASE LAW.

CHANCERY COURT OF YORK. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.9.

CHANNEL. See MAIN NAVIGABLE CHANNEL.

CHARTER OF FUNDAMENTAL RIGHTS. Stat. Def., "the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007" (European Union (Withdrawal) Act 2018, s.20(1)).

CHEATING. "The principal issue on this appeal is whether a method of play called 'edge-sorting', which involves exploiting design irregularities on the backs of playing cards, results in cheating when playing Punto Banco, a variant of Baccarat. In Punto Banco, a single player plays against the casino or 'house' offering the game. The appellant, Mr Philip Ivey (hereafter Mr Ivey), a well-known professional gambler from the United States, considers that it is lawful for skilful players such as him, known as 'advantage players', to use methods of play such as this. He contends that edge-sorting ought to be known to the casino and the casino could protect itself against it. It follows that when he admittedly used edge-sorting he subjectively did not have any dishonest intention and his play cannot therefore have amounted to cheating. The respondent casino, known as Crockfords Club (hereafter 'Crockfords'), say that they did not know about edge-sorting, and that it altered the odds against them unfairly.... It is common ground that there was an implied term in the parties' contract not to cheat. The meaning of cheating for this purpose is to be determined in accordance with section 42 of the 2005 Act. In my judgment, this section provides that a party may cheat within the meaning of this section without dishonesty or intention to deceive: depending on the circumstances it may be enough that he simply interferes with the process of the game. On that basis, the fact that the appellant did not regard himself as cheating is not determinative.

There is no doubt that the actions of Mr Ivey and Ms Sun interfered with the process by which Crockfords played the game of Punto Banco with Mr Ivey. It is for the court to determine whether the interference was of such a quality as to constitute cheating.

In my judgment it had that quality for the reasons given above, which reflect the reasons given by judge. In particular the actions which Mr Ivey took or caused to be taken had a substantial effect on the odds in the game and Crockfords were not aware of this at the relevant time. In these circumstances, no lower standard applied in this case because Mr Ivey was an advantage player who was in an adversarial position with the casino." *Ivey v Genting Casinos UK Ltd (t/a Crockfords Club)* [2016] EWCA Civ 1093.

CHILD IN NEED. See Stewart, *R (On the Application Of) v Birmingham City Council* [2018] EWHC 61 (Admin).

CLOUD COMPUTING SERVICE. Stat. Def. ("a digital service that enables access to a scalable and elastic pool of shareable computing resources"), Network and Information Systems Regulations 2018 reg.1.

COEFFICENT OF PERFORMANCE. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

COLLATERAL. "A matter is collateral if it is something that stands apart from the main issue. As such it will not be immediately relevant to the main issue and therefore evidence of the collateral matter will not generally be admissible in an inquiry into the main issue." *Appeal by Stated Case in the Cause (1) JS and (3) CS Against the Children's Reporter* [2016] ScotCS CSIH 74.

COLLEGE, SCHOOL OR HALL OF A UNIVERSITY. "The phrase 'college, school or hall of a university' has an obvious meaning in the context of UK universities as they operated in 1972. Both Oxford and Cambridge (to take the most obvious examples of universities which operate on a collegiate basis) have been organised for centuries on a federal system under which the colleges and private halls, although legally independent and self-governing, have provided the undergraduate and graduate students of the university and have assumed the primary responsibility for their tuition. The universities themselves are corporations now regulated by statute with their own separate legal identity and status. Their statutes govern such matters as admission to degrees, the giving of lectures and student discipline. The universities remain responsible for the administration of their academic and research departments but operate in terms of governance through Congregation (in the case of Oxford) and the Regent House (in the case of Cambridge) which are made up of university officers, heads and fellows of the colleges; and other academic, research and administrative staff. In each case the governing body of the university has the power to amend its statutes and regulations and to determine policy issues affecting the operation of the university. The colleges and private halls are therefore an integral part of the structure of the university and their members make up the university's teaching staff and students. No student member of a college or hall is not a member of the university or takes a course of study which does not, if successful, lead to the conferment of a university degree. . . . The word 'college' is derived from the Latin word 'collegium' meaning a partnership. It denotes a group of people organised as an institution usually (but not necessarily) in the field of education. The use by SAE Institute of the word 'college' to describe its Littlemore campus could not therefore be said to be a misuse of language, but whether it can properly be described as a college of MU is a different question which cannot in my view be answered simply by reference to a document under which the University agreed that SEL should be called an 'associate college' of MU or the fact that for a long time the two bodies have collaborated in the delivery of

a limited range of degree courses leading to an MU qualification." *SAE Education Ltd v Revenue And Customs* [2017] EWCA Civ 1116.

COMMISSION OF REVIEW. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.19.

COMMODITY. "My starting point is that in interpreting a Directive and Regulations aimed at commercial agents, it is necessary to interpret 'commodities' in its commercial sense, i.e. as it would be understood as such by commercial parties both as principals and agents. Commodities is a term often used in the commercial world of trade and finance in a particular sense, which is a narrower sense than the everyday use of the word. In everyday use it can cover almost all things which can be bought or sold; but in its commercial sense it is not synonymous with 'any tangible goods'. In the commercial world it includes, for example, oil and gas products, some precious and industrial metals, grain and other agricultural or raw foodstuffs such as coffee, sugar or pork bellies. Many are subject to futures and options trading, but not all.

A statutory definition is to be found in section 9A(9) of the Building Societies Act 1986, section 9A(1) of which prohibits building societies from acting as a market maker or trading in commodities, amongst other things. The definition is: '"commodity" means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market.'

A similar form of wording is found in s. 11(2) of the Financial Services (Banking Reform) Act 2013 for the purposes of regulating certain proprietary trading, save that the subsection uses the words as an inclusive but not exclusive definition.

This is a useful starting point, provided agriculture is treated as wide enough to include animal farming. However in determining whether there is a sale on a commodity exchange or commodity market, it is not enough to inquire whether the goods in question are a commodity. The relevant question is whether the sale is of the goods as a commodity, and the sale is on 'the commodity market' or a commodity exchange. The focus must be on the manner and place of sale as well as the nature of the goods sold. Coffee beans bought by description in bulk are a recognised category of commodity sale. The same coffee beans sold in a packet in the supermarket are not. Commodity markets are limited to wholesale trading. Moreover not all wholesale purchases of goods which fall within the statutory definition identified above would be regarded by commercial men as trading in commodities. Billingsgate would not be regarded as a commodity market. The fact that some sales of raw materials falling within even the narrowest definition of commodities will not constitute commodity trading illustrates the need to focus on the nature of the sale process and not just the nature of the goods.

The concept of a commodity sale generally focusses on generic goods in bulk, goods which are indistinguishable in origin or features from other goods of the same type. But that is not always so. A sale afloat of a specific cargo of oil from a specific refinery would be regarded as a commodities sale. I was for a time attracted by a distinguishing criterion of whether goods were bought by description, sight unseen, as opposed to goods being subject to inspection. However this cannot be decisive. What are generally accepted as sales of commodities may have been subject to inspection by sampling, whether by the buyers or others. A grain broker who purchases a cargo of grain afloat with the benefit of inspection certificates would be regarded as making a

purchase on the commodity market, as he would in an ex warehouse or FOB sale where the buyer had the power of inspection and rejection himself. Where generic goods are bought by description, that is a pointer towards their being bought as commodities, but the opportunity to inspect is not fatal to their being so." *W Nagel (a firm) v Pluczenik Diamond Company NV* [2017] EWHC 1750 (Comm).

COMMON NAME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

COMMUNICANT. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.95.

COMMUNICATION. Stat. Def., "in relation to a postal operator or postal service..., includes anything transmitted by a postal service", Investigatory Powers Act 2016 s.262(2).

COMPELLING REASON. "In section 113 of the [Court Reform (Scotland) Act 2014] the words 'compelling reason' has a particular legal meaning. It does not merely mean compelling in the general sense. A starting point for what may be a compelling reason is an arguable material error of law. I am not persuaded that the Sheriff Appeal Court did make any error of law in this case and therefore the application for leave to appeal falls at the first hurdle." *KS, Application for Leave to Appeal under Court Reform (Scotland) Act 2014* [2017] ScotCS CSIH 68.

COMPULSORY TICKET AREA. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

COMPUTERISED MODEL. Stat. Def., Oil and Gas Authority (Offshore Petroleum) (Retention of Information and Samples) Regulations 2018 reg.1.

CONCERNS. "In my opinion the word 'concerns' has been carefully chosen by the drafters to be wide enough to encompass matters which are incidental or ancillary to the determination of a person's entitlement. Concern is defined in the Oxford dictionary as: 'to have relation or reference to; to refer to; relate to; to be about a connection or association with.' This is the meaning that the drafter intended and is the ordinary or natural meaning. It does not lead to an absurdity, in fact quite the opposite as it is common sense that the tribunal determines incidental matters such as whether it is an in country or out of country appeal." *PW v The Secretary of State for The Home Department* [2017] ScotCS CSOH 47.

"An 'entitlement' is subtly different from a 'right'. The natural meaning of the latter is something inherent and existing. The natural meaning of an 'entitlement' is a benefit which is obtained or granted. Moreover, a decision which 'concerns' an entitlement appears to me naturally to include a decision whether to grant such an entitlement. That is precisely what the Secretary of State must do in such a case as this." *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755.

CONCERT. "Orchestral concert". Stat. Def., Corporation Tax Act 2009 s.1217PA as inserted by the Finance Act 2016 Sch.8 para.1.

CONDUCT. "In my opinion, on a proper construction of section 6(4) the word 'conduct' has its ordinary meaning of behaviour. The expression is wide enough to include an omission to act in breach of an obligation or duty. It is very difficult to see why it should be given a more restrictive meaning, particularly since it is clear that a broad view is to be taken to the construction of section 6(4) (*BP Exploration Co Ltd v Chevron*, per Lord Hope at paragraph 31, Lord Clyde at paragraphs 66–67, Lord Millet at paragraph 97; *Dryburgh v Scotts Media Tax Ltd*, supra, Opinion of the Court at paragraphs 18–20). Resort to the mischief rule points in the same direction. The

mischief the error provision was intended to address is broad enough to encompass error induced by a failure of the debtor to act in breach of an obligation or duty. A construction of 'conduct' which confined it to positive acts would fail to address part of the mischief. It would be very odd indeed if innocent action inducing error fell within the purview of the provision but reprehensible inaction in breach of duty did not. The equitable case for the latter circumstance being included within the scope of the mischief, and within the meaning of 'conduct', is as strong as the case for reprehensible action being included and stronger than the case for innocent action being included." *Heather Capital Ltd & Ors v Levy & McRae & Ors* [2016] ScotCS CSOH 107.

"It seems that an employee's 'conduct' within the meaning of section 98(2)(b) of the Act can precipitate a fair dismissal even if it does not constitute a breach of her contract of employment: see the observation of Phillips J on behalf of the EAT in *Redbridge London Borough Council v Fishman* [1978] ICR 569, 574, adopted by the EAT in *Weston Recovery Services v Fisher* UKEAT/0062/10/ZT, [2010] UKEAT 0062_10_0710 at para 13." *Reilly v Sandwell* [2018] UKSC 16.

CONNECTED. See IN ANY WAY CONNECTED WITH.

CONSISTORY COURT. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.1.

CONSTRUCTION ESTABLISHMENT. Stat. Def., Industrial Training Levy (Construction Industry Training Board) Order 2018 art.5.

CONSTRUCTION INDUSTRY. Stat. Def., Industrial Training Levy (Construction Industry Training Board) Order 2018 art.2.

CONSUMER. Stat. Def., Housing Administration (England and Wales) Rules 2018 rule 1.3.

CONSUMER PRICE INDEX. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

CONTRACTED OUT SHORT-TERM HOLDING FACILITY. Stat. Def., Short-term Holding Facility Rules 2018 rule 2.

CONVERSION. "First, the concept of 'conversion' is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1. Mr Campbell responded to this by saying that Class Q must be read as a whole (including therefore Q.1) and read as such it provides a comprehensive definition of 'convert'. This was made up of (i) the requirement in Q that the starting point be an 'agricultural building' and the end point be a 'dwelling'; and (ii) the requirement in paragraph [105] NPPG that the existing building be sufficiently load-bearing. The requirement in Q.1(i) that the works be no more than 'reasonably necessary for the building to function as a dwelling house' was inherent in the first condition, i.e. the definition of a dwelling. It was argued that provided these conditions were met there was no more that was needed to be assessed by a decision maker in order to come to the conclusion that the works amounted to a conversion. The difficulty with this argument is that, on a fair construction of the drafting logic of the Order, the requirement that development amount to a 'conversion' is drafted as a separate requirement from these other conditions. In particular (as set out in the second point below) the concept of conversion has inherent limits which delineate it from a rebuild.

Second, a conversion is conceptually different to a 'rebuild' with (at the risk of being over-simplistic) the latter starting where the former finishes. Mr Campbell, for the Claimant, accepted that there was, as the Inspector found, a logical distinction between a conversion and a rebuild. As such he acknowledged that since Class Q referred to the concept of a conversion then it necessarily excluded rebuilds. To overcome this Mr Campbell argued that a 'rebuild' was limited to the development that occurred following a demolition and that it therefore did not apply to the present case which did not involve total demolition. In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form-based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in 'agricultural building'. There will be numerous instances where the starting point (the 'agricultural building') might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild', which also encapsulates what the Inspector had in mind, might be 'fresh build' since rebuild seems to assume that the existing building is being 're' built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. I should add that the position of the Claimant was that the challenge was as to law; if the argument in law was lost (and the Inspector did not therefore misdirect herself) then it was not argued that the Inspector acted irrationally in coming to the conclusion that the works were a rebuild/fresh build, and not a conversion.

Third, in relation to the argument that the conversion/rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as inspectors, who are well able to understand what the term means in a planning context (see by analogy *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at paragraph [19(4)] in relation to policy guidance). The concept of 'conversion' must also be understood in its specific planning context. It is not a term that can be plucked without more directly from a dictionary. Indeed, Mr Campbell acknowledged the logic, in the planning context, of the distinction between a rebuild and a conversion." *Hibbitt v Secretary of State for Communities and Local Government* [2016] EWHC 2853 (Admin).

COSTS. "Mr Bacon QC contended in his skeleton argument that Master James erred in relying on CPR 44 to construe 'costs' for the purposes of determining what costs were to be included in an interim statute bill under the Solicitors Act 1974. He submitted that the CPR is a self-contained statutory code and the definitions are not intended to have a wider application. Counsel pointed out that the concept of interim statute bills was recognised as far back as *Re Romer & Haslam* [1893] 2 QB 286 decided well before the CPR. Counsel drew attention to the transcript of the proceedings before Master James in which at page 33 line 7 Mr West, acting for the

Defendant, made a similar submission. Further it was submitted by Mr Bacon QC that in this case the retainer provided for separate fee and disbursement invoices. Accordingly only one or other of those would be regarded as costs for a particular bill.... Further, for reasons set out in considering Ground 1, in my judgment the Master did not err in concluding that costs for the purposes of a statutory bill of costs in the Solicitors Act 1974 included disbursements where they are incurred." *Richard Slade And Company Solicitors v Boodia* [2017] EWHC 2699 (QB).

COUNTRY. Stat. Def. ("includes any territory, region or other place", Sanctions and Anti-Money Laundering Act 2018 s.62.

COUNTY LINES. See CUCKOOING.

COURT OF ECCLESIASTICAL CAUSES RESERVED. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.16.

COVENANT. See EASEMENT.

CRIMINAL CAUSE OR MATTER. "The phrase 'criminal cause or matter' has received extensive judicial consideration, although with one exception (to which I will come) not in the context of the JSA 2013. Judicial consideration of that phrase has arisen overwhelmingly during consideration of appeal routes from the High Court, currently laid down in Section 18 of the Senior Courts Act 1981, and previously under predecessor statutes. This forms an important context to the use and meaning of the critical phrase.... In my view, the review of authority on criminal appellate jurisdiction produces no real clarity. Even setting aside the reasoning of the Court of Appeal in *Re Green*, about which there is wide judicial scepticism, there is still a considerable variation in the width of judicial interpretation of the critical phrase. Having analysed the case law closely above, it seems to me unnecessary to say very much more on that point.... It seems to me the critical points are as follows. Firstly, the phrase may have different meanings in different statutes, as was recognised by the Court in *Guardian News 2*. Without any recourse to the Green Paper or Explanatory Notes, it is clear that in enacting the JSA 2013 Parliament was forging a solution, however controversial to some, to a wide range of proceedings, with the common thread that the proceedings could not be properly tried and the relevant evidence examined by the court, without closed material proceedings. I am fully alive to the problems attendant on such proceedings, having attempted to articulate them in *F v Security Service and Others* [2014] 1 WLR 1699, in particular at paragraphs 16 to 27. The most important problem is that, even if justice is being done, it cannot be seen to be being done....

The question of jurisdiction here only constitutes a live issue if it is shown there is material which would justify a declaration under s.6 of the 2013 Act. In such circumstances, the outcome of a PII application would be likely to remove important information from the Court's scrutiny. In my view, a likely further effect might well be that such a prosecutorial decision as this could not be effectively reviewed. If the relevant information is such that the fair and efficient trial of the case requires it to be considered, the case might be found to be untriable. I make no assumption as to which side would suffer and which would gain from such an outcome, but the outcome would likely be injustice to one party. That is an outcome to be avoided if it properly may.... Whether a declaration under Section 6 is made or not, whether the existing prosecutorial decision is upheld or remitted for review, and whatever the outcome of any such review, neither the Claimants nor the potential criminal defendant will be made privy to all of the information properly to be borne in mind by the prosecutor.

Even setting aside legal professional privilege in relation to the historic decision, privilege arising in respect of any future prosecutorial decision, and the likely nature of security evidence here, means that is so.... However, here I agree with the Claimants' arguments, and it seems apt to say so, to make my reasoning clear. I am unable to see how a jurisdictional question can be decided in that way. Moreover, it is perfectly conceivable that, in related matters based on the same body of evidence, the DPP will decide to prosecute X and not to prosecute Y. If both decisions were challenged, could it really be the law that there could be no closed material proceedings in one challenge, while there was in the other? What if the victim's challenge to a negative decision succeeded following closed material proceedings, the matter was reviewed, and a change of mind prevailed: would the prospective criminal defendant then mounting a judicial review challenge be precluded from applications under Section 6 of the 2013 Act, if he were advised it was in his interests to make it? Once analysed, it seems to me that submission must fail." *Belhaj v Director of Public Prosecutions (DPP)* [2017] EWHC 3056 (Admin).

CROWN OF ACT OF STATE. See ACT OF STATE.

CUCKOOING. "The feature is known as 'cuckooing'. Sometimes it is known as 'running county lines'. The phenomenon represents a development or adaptation in the drug supply market. This is unsurprising as markets inevitably adapt and mutate with time.... In general terms, cuckooing refers to retail drug dealers from large metropolitan centres who travel to a smaller provincial community to sell drugs and who set themselves up in premises locally from which they will operate. Very frequently, they will latch onto a local dealer and take over his network, or onto a local user, and take over his address as a base for operations. Sometimes it is a combination of the two. Often large supplies of the drug will not be maintained in the provincial centre, but will be the subject of a re-supply operation from the metropolitan base. Sometimes a manager will be placed in the local area to run operations. Sometimes, as in the case of *Limby*, young people will be sent or taken to a local centre with sufficient supplies to make inroads into local networks. They may often be lightly convicted or unconvicted." *Ajayi, R v* [2017] EWCA Crim 1011.

CULTURAL PROPERTY. Stat. Def., Cultural Property (Armed Conflicts) Act 2017 Sch.1 Art.1.

CURRENT. "The ordinary meaning of the word 'current' does not encompass 'recent' or 'latest'. Mr Malik does not submit to the contrary. 'Has current ... leave' would appear to be referring to an existing state of affairs. He also accepts that the reference to completing a course 'within the applicant's last period of entry clearance, leave to enter or leave to remain', in the first of the two subsidiary criteria, provides a contrast with current entry clearance. At first blush it would appear that if his suggested interpretation of the word 'current' were right, it should have been used again for the purposes of consistency in subparagraph (i)." *Behary, R. (on the application of) v Secretary of State for the Home Department* [2016] EWCA Civ 702.

D

DAMAGE. "In my view Hickinbottom J was right to conclude that the concept of 'damage' in article 2(2) of the Environmental Liability Directive, properly understood in its context, means a measurable deterioration in the existing state of the 'natural resource' or the 'natural resource service' in question. Both a measurable 'adverse change' in a 'natural resource' and a measurable 'impairment' of a 'natural resource service' involve a measurable deterioration to that 'natural resource' or 'natural resource service', as the case may be, from its 'baseline condition', as defined in article 2(14). Where the 'impairment of a natural resource service' is concerned, this concept of 'damage' applies, through the definition of 'natural resource services' in article 2(13), to any 'impairment' to 'the functions performed by a natural resource for the benefit of another natural resource or the public'. The concept of 'environmental damage' in article 2(1), where it concerns '(a) damage to protected species and natural habitats …' and '(b) "water damage"', imports and depends upon that concept of 'damage'. This, I believe, is the only interpretation of the concepts of 'damage' and 'environmental damage' compatible with the other relevant provisions of the Environmental Liability Directive." *Seiont, Gwyrfai and Llyfni Anglers' Society v Natural Resources Wales* [2016] EWCA Civ 797.

DATA CONCERNING HEALTH. Stat. Def., Data Protection Act 2018 s.205.

DATA PROTECTION LEGISLATION. Stat. Def., Data Protection Act 2018 s.3.

DATA SUBJECT. Stat. Def., Data Protection Act 2018 s.3.

DEEP GEOTHERMAL. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

DEFAULT. "Secondly, the limb in the relevant legislation that deals with the 'infringement' by an employer – or, in the context of Regulation 30(4)(a), 'default' – is not naturally language that is concerned with compensation at all. Rather it concerns the nature or extent of the employer's unlawful action: for example, was it a one-off incident or was it a persistent practice?" *Gomes v Higher Level Care Ltd* [2018] EWCA Civ 418.

DETERMINATION. "I also think that the use of the word 'determination' elsewhere in the regime under sections 67 and 68 of RIPA tends to indicate that Parliament intended it to mean both a real determination and a purported determination (in the Anisminic sense of those terms): see section 68(4) and (5), where the word is used to refer to determinations in both senses." Privacy International, *R (on the application of) v Secretary of State for Foreign and Commonwealth Affairs* [2017] EWCA Civ 1868.

See FINAL DETERMINATION.

DEVOLVED AUTHORITIES. Stat. Def., Financial Guidance and Claims Act 2018 s.26.

DIFFERENCE IN VIEWS. "The questions raised in this appeal are as to the interpretation of the phrase 'a difference in views' for the purposes of Article 6(2) of

Regulation 987/2009 [2009] OJ L284/1 (the 'implementing Regulation') and the nature of the evidence necessary to establish such a difference in views.... What does 'difference in views' mean for the purposes of Article 6 of the implementing Regulations? First, I should mention that it is common ground that the 'difference in views' to which Article 6 refers is as to competence and not eligibility. Secondly, it is accepted that the phrase and Article 6(2) must be construed against the relevant legislative background, being the basic Regulation and the implementing Regulation as a whole, and that Decision A1 is a proper aid to construction. Thirdly, it is not in dispute that it is necessary to approach the matter of interpretation purposively.... I agree with UT Judge Jacobs that if Article 6(2) is construed against that background and care is taken to avoid a construction which would be unworkable or impracticable in reality, there is no need for a formal dispute in the sense of conflicting written decisions of the relevant institutions or Member States in order for a 'difference in views' to arise. It seems to me that if that had been the intention of the legislature, a different and a more restrictive phrase would have been used. Of course, a difference in views will have arisen in a case in which there are conflicting formal decisions in Member States about the competency of those States to pay benefits to an individual or in circumstances which apply to that individual claimant. That does not mean that it is necessary for there to be a formal decision of a Member State in order for there to be a 'difference of views'. It seems to me that the phrase, taken in context, is broad enough to cover a variety of circumstances ranging from conflicting formal, written decisions to the expression of different views as to the competence of the Member State by the State itself or an authorised representative of the relevant authority or institution." *The Secretary of State for Work and Pensions v Fileccia* [2017] EWCA Civ 1907.

DIGITAL SERVICE. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

DIGITAL SERVICE PROVIDER. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

DIOCESAN BOARD OF FINANCE. Stat. Def., Endowments and Glebe Measure 1976 s.45.

DIRECT EU LEGISLATION. STAT. DEF.,

"(a) any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as—

(i) it is not an exempt EU instrument (for which see section 14(1) and Schedule 6),

(ii) it is not an EU decision addressed only to a member State other than the United Kingdom, and

(iii) its effect is not reproduced in an enactment to which section 2(1) applies,

(b) any Annex to the EEA agreement, as it has effect in EU law immediately before exit day and so far as—

(i) it refers to, or contains adaptations of, anything falling within paragraph (a), and

(ii) its effect is not reproduced in an enactment to which section 2(1) applies, or

(c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before exit day" (European Union (Withdrawal) Act 2018, s.20(1).

DIRECT MARKETING. Stat. Def. ("the communication (by whatever means) of advertising or marketing material which is directed to particular individuals"), Financial Guidance and Claims Act 2018 s.26.

DISHONESTY. "Dishonesty and want of integrity have long been treated as different (if overlapping) regulatory concepts. One can lack integrity without being dishonest, for example, see: *Bolton v Law Society* [1994] 1 WLR 512; [1994] 2 All ER 486; *Hoodless and Blackwell v Financial Services Authority* [2003] UKFTT FSM007; *SRA v Chan and Ali* (supra); *Scott v SRA* [2016] EWHC 1256 (Admin); *SRA v Wingate and Evans* [2016] EWHC 3455 (Admin); [2017] ACD 31; and *Newell-Austin v SRA* [2017] EWHC 411 (Admin); [2017] Med LR 194. There was no suggestion to the contrary before the Tribunal.... I proceed on the basis, both on the authorities and as a matter of principle, that, in the field of solicitors' regulation, the concepts of dishonesty and want of integrity are indeed separate and distinct. Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor. It does not require the subjective element of conscious wrongdoing." *Williams v Solicitors Regulation Authority* [2017] EWHC 1478 (Admin).

DISPOSITION. "In some circumstances, the term 'disposition' may, as Lord Neuberger demonstrates, embrace destruction or extinction of an interest. In the present context, one might also pray in aid academic descriptions of the wrongful alienation of trust property (even if it did not override any beneficial interest in such property) as a 'misapplication of trust assets' (see Snell's Equity (33rd ed), paras 30-013, 30-050 and 30-067) and a 'disposition ... in breach of trust' (see Swadling in Burrows, English Private Law (3rd ed), para 4.151). But the natural meaning of 'disposition' in the context of section 127 is in my view that it refers to a transfer by a disponor to a disponee of the relevant property (here the beneficial interest), not least when the section goes on to render any disposition 'void' unless the court otherwise orders." *Akers & Ors v Samba Financial Group* [2017] UKSC 6.

"In the light of these comments, I consider that I am therefore free to hold that the release of contractual rights such as a debt by a creditor company in favour of the debtor constitutes a 'disposition' of the property of the company within the meaning of s 127. I accept that the word 'disposition' is not apt to cover mere effluxion of time of a wasting asset, such as a lease. Nor is it apt to cover deliberate consumption or waste by the company of its assets. But there is nothing in the section to require that the disposition of the company's property should be one by which the same identifiable property should leave the ownership of the company and become the identifiable property of another person." *Officeserve Technologies Ltd v Anthony-Mike* [2017] EWHC 1920 (Ch).

DISSIPATION. "I was not addressed on the meaning of dissipation. The pursuer simply asserted that the defender had dissipated funds representing matrimonial property. There is no statutory definition of 'dissipation', which suggests its ordinary meaning 'to squander' or 'to waste' is to be applied. The phrase in which that word appears in section 10(6)(c) is 'destruction, dissipation or alienation of property'. Those other words ('destruction' or 'alienation') colour the meaning of 'dissipation'. In my

view, section 10(6) is to enable account to be taken of an intentional or dissolute diminution, by one of these means, of the matrimonial commonwealth and constituting such diminution other than by way of ordinary or bona fides dealings. Applying its ordinary meaning, 'dissipation' is suggestive of a waste or loss of matrimonial funds which cannot be traced or which is not represented by a replacement asset. Excessive spending grossly out of proportion to the resources within the matrimonial commonwealth or monies lost by gambling might be examples of 'dissipation'.

[46] If that understanding is correct, 'dissipation' in section 15(6) is unlikely to include inter vivos intergenerational gifts or those made for the purposes of tax planning. What the whole evidence discloses is a person of wealth passing on some of that wealth, in a way intended to be tax efficient, to his children. Given the familial context, the usual presumption against donation does not apply but rather such a payment is presumptively a gift made *ex pietate* or out of a sense of natural obligation, such as that owed by a parent to a child: *Malcolm v Campbell* (1889) 17 R 255." *EP or G v GG* [2016] ScotCS CSOH 32.

DOCUMENT. Stat. Def. ("includes a written notice or statement or anything else in writing capable of being delivered to a recipient"), Housing Administration (England and Wales) Rules 2018 rule 1.3.

DOMESTIC ABUSE. Stat. Def., Housing Act 1985 s.81B(2C) inserted by Secure Tenancies (Victims of Domestic Abuse) Act 2018 s.1.

DOMESTIC LAW. Stat. Def., European Union (Withdrawal) Act 2018, s.20(1).

DOMESTIC PREMISES. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

DOWNLINK FREQUENCIES. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

DRAFT. "Though initially it was suggested by the Applicant on paper that it was a factual error to describe a cheque drawn by the Halifax on its own account as a 'draft' I do not accept that this was materially false: a cheque drawn on a branch suspense account by a building society is to be treated in every respect in a similar way to a cheque drawn by a bank upon its own funds. The latter describes a 'bankers draft'. That description was entirely appropriate for a cheque (or draft) such as that exhibited in the present case." *Coghlan v Bailey* [2017] EWHC 570 (QB).

DRILLING. "I first consider whether there is a 'natural' interpretation of the words 'commencement of drilling'. I find that there is and it is the physical penetration of the seabed, i.e. spudding. This is to be distinguished from preparations for drilling. Drilling is itself not a momentary process and so it is perfectly sensible to speak of when drilling starts, in the spudding sense, and when it stops. That is the sense in which one would define drilling the road or the drilling of one's teeth by a dentist. I further find that 'commencement' naturally means the beginning of drilling, not the beginning of preparations for drilling." *Vitol E&P Ltd v Africa Oil and Gas Corp* [2016] EWHC 1677 (Comm).

DRINK. "Soft drink". Stat. Def., Finance Act 2017 s.26.

DUE REGARD. "But I am equally wholly unpersuaded that there is in reality any material difference between the obligations to have regard and to have due regard. Merely to have regard in the sense that the existence of the statutory requirements is recognised is never likely to suffice, albeit much will turn on the nature of the matters to which regard must be had. In s.1C it is a specific need to reduce inequalities so that

the defendant is obliged to show that that need is recognised and that what is proposed does not in his view at the very least cause an increase in such inequalities. All that 'due' adds in my view is a specific recognition that the effect of the decision on the specified matters must be properly taken into account. It could indeed be argued that 'due' does not strengthen but rather weakens in that it recognises that there may be circumstances in which regard is not needed. But it seems to me in any event that the argument was a barren one having regard to the nature of the obligation in s.1C." *Pharmaceutical Services Negotiating Committee, R. (on the application of) v Secretary of State for Health* [2017] EWHC 1147 (Admin).

DURABLE MEDIUM. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

DWELLING. "Second, whilst the word 'dwelling' is not defined in the regulations, and I eschew any attempt to define it, the concept of a dwelling is not apt to describe the circumstances of a person who is compulsorily detained in an institution. Some colour is gained from the reference in regulations 3(2)(b) to 'the household in the dwelling'. Whilst not all dwellings contain a 'household', for a person may dwell alone, the concept of a dwelling in the regulations is clearly that of a social unit which may include a household. The shared room of a detained person does not, and cannot." *Hussein v Secretary of State for the Home Department* [2018] EWHC 213 (Admin).

E

EARNINGS. "i) For the purposes of a child support maintenance assessment, the scope of self-employed earnings is the same as it is for the assessment of welfare benefits and income tax. That is unsurprising given that the definition used in the child support scheme is transposed from the Social Security Contributions and Benefits Act 1992, and is in terms of 'taxable income'.

ii) It has been established since at least 1925 that winnings from gambling are generally excluded from the scope of self-employed earnings for the purposes of income tax. The fact that an individual is a 'professional' gambler, who has no other income and relies upon gambling for a living, does not of itself mean that he is 'gainfully employed' as a 'self-employed earner' for the purposes of liability to income tax; nor does the regularity, sophistication or success of his gambling, or his employment of a system that (at least in his own belief or aspiration) will result in his winnings exceeding his losses. A policy reason for HM Revenue and Customs, with the support of the Secretary of State for Work and Pensions, not wishing to tax winnings from gambling is not hard to identify: if such winnings were taxable as self-employed earnings, then gambling losses could be set off against other taxable profits or gains, possibly to the point at which the taxpayer might be entitled to claim social welfare benefits (see *Hakki* at [9]), an outcome which might understandably be regarded as unacceptable in policy terms.

iii) As gambling winnings are not generally taxable as self-employed earnings, neither are they generally regarded as self-employed earnings for the purposes of the assessment of welfare benefits or of a child support maintenance assessment.

iv) Such winnings are only self-employed earnings for any of these purposes where they are an adjunct to a trade or profession in which the individual is engaged, e.g. where the individual makes his winnings as a dealer at a gambling club which he owns (*Burdge v Pyne*), or where a poker player receives a fee for regularly appearing on television to advise the audience as to how to play poker and makes winnings from other people participating in that programme (see *Hakki* at [17]). But, without such an association, as a matter of law a gambler's winnings cannot amount to profits or gains arising from a trade, profession or employment, and cannot be within the scope of the self-employed earnings for the purposes of the child support scheme." *French v The Secretary of State for Work and Pensions* [2018] EWCA Civ 470.

EASEMENT. "It is clear law (and counsel for the appellant did not dispute) that clauses in a deed which conveys property can be construed as a grant of an easement even though they are framed expressly in terms as a covenant and even though the word 'covenant' is used (see e.g. *Rowbotham v Wilson* [1843-60] All ER Rep 601, 603, and *Russell v Watts* (1885) 10 App Cas 590). Therefore the fact that a clause uses the word 'covenant' does not mean it only takes effect as a covenant and cannot do so as a grant. Moreover, as explained by Diplock LJ in *Jones v Price*, the decision in *Austerberry* is concerned with the inability of provisions which are covenants as

distinct from grants, to run with the land. Diplock LJ specifically drew the distinction between a grant and a covenant when he distinguished *Austerberry*. His judgment was that something which is a grant does not fall foul of *Austerberry*. It seems to me therefore that it follows that in a case in which the provision is construed as a grant, *Austerberry* is irrelevant." *Churston Golf Club v Haddock* [2018] EWHC 347 (Ch).

ECCLESIASTICAL LEGISLATION. Stat. Def., Legislative Reform Measure 2018 s.1.

ECONOMIC RESOURCES. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.60.

EMISSION. Stat. Def. ("the release of a substance from a point or diffuse source into the atmosphere"), National Emission Ceilings Regulations 2018 reg.2.

EMOLUMENTS. Stat. Def. ("means—(i) salaries, fees and wages excluding fees which are paid to a company director who is remunerated solely by fees; (ii) any gratuity or other profit or incidental benefit of any kind obtained by an employee, if it is money or money's worth, other than pensions contributions; (iii) anything else that constitutes, or is intended to constitute, earnings of the relevant employment"), Industrial Training Levy (Construction Industry Training Board) Order 2018 art.2.

EMPLOYEE. "I do not think that in ordinary language an individual such as Mr Arslan whose services are supplied to a solicitor's firm under a contract between the firm and the company which the individual owns and directs would naturally be described as an 'employee' of the firm, even if the firm has control over his work or exclusive control over his time for all or part of his working week." *Solicitors Regulation Authority (SRA) v Solicitors Disciplinary Tribunal* [2016] EWHC 2862 (Admin).

EMPLOYER. Stat. Def., Industrial Training Levy (Construction Industry Training Board) Order 2018 art.3.

ENACTMENT. "It is clear (for example from section 1 of the Interpretation Act and *Wakefield and District Light Railways Co v Wakefield Corporation* [1906] 2 KB 140, at 145), that the concept of an enactment, as used in section 17, is not limited to whole Acts, parts or even sections of an Act. Any provision, long or short, which achieves a distinct objective may be an enactment. In my view Mr Dowding's attempt to combine saving provisions with the provisions to which they are an exception or derogation as indivisible enactments is simply wrong in principle. To do so would deprive section 17(2) of much of its force. It applies to 'any reference' in one enactment to another enactment. A reference by way of saving or exception is in my view squarely within that framework." *John Lyon's Charity v London Sephardi Trust* [2017] EWCA Civ 846.

Stat. Def., ("means an enactment whenever passed or made and includes—

(a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and

(e) except in section 2 or where there is otherwise a contrary intention, any retained direct EU legislation") – European Union (Withdrawal) Act 2018, s.20(1).

Stat. Def., Space Industry Act 2018 s.69; Stat. Def., Data Protection Act 2018 s.205.

ENCLOSE. "In any event, however the phrase 'enclose or set apart' came to arrive in section 145 of the 1972 Act, given that, as a matter of ordinary language, 'enclosing' an area of land necessarily connotes putting some form of barrier round the whole of that area with a view to preventing access to and/or egress from it, in its full context, in my view, Parliament intended section 145 to give a power to the relevant local authority to exclude members of the public, e.g. those who do not have a ticket and have not paid, from that part." *The Friends of Finsbury Park, R (on the application of) v Haringey London Borough Council* [2017] EWCA Civ 1831.

ENCOURAGEMENT. See INDIRECT ENCOURAGEMENT.

ENERGY CONTENT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

ENERGY CROP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

ENTITLEMENT. "In my view, not only does the context favour the Appellant's interpretation (for the reasons set out above) but that is the more natural meaning of the words. An 'entitlement' is subtly different from a 'right'. The natural meaning of the latter is something inherent and existing. The natural meaning of an 'entitlement' is a benefit which is obtained or granted. Moreover, a decision which "concerns" an entitlement appears to me naturally to include a decision whether to grant such an entitlement. That is precisely what the Secretary of State must do in such a case as this." *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755.

ENVIRONMENT. "The definition of 'environment' is to be given a broad meaning: see *Venn*, and *Lesoochranarske Zoskupenie VLK v Ministerstvo Zivotneho Prostredia Slovenskej Republiky* (Case C-240/09) [2012] QB 606." *Dowley, R. (on the application of) v Secretary of State for Communities and Local Government* [2016] EWHC 2618 (Admin).

EQUITABLE COMPENSATION. See *Interactive Technology Corporation Ltd v Ferster* [2017] EWHC 217 (Ch).

ESSENTIAL SERVICE. Stat. Def. ("a service which is essential for the maintenance of critical societal or economic activities"), Network and Information Systems Regulations 2018 reg.1.

ESTABLISHED PRESENCE. See CURRENT.

EU-DERIVED DOMESTIC LEGISLATION. Stat. Def., "means any enactment so far as—

(a) made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972,
(b) passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act,
(c) relating to anything—
  (i) which falls within paragraph (a) or (b), or
  (ii) (ii) to which section 3(1) or 4(1) applies, or
(d) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act 1972"—but note that the definition is subject to section 5 and Schedule 1 (exceptions to savings and incorporation) ((European Union (Withdrawal) Act 2018, s.1).

EU DIRECTIVE. Stat. Def., "a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union" (European Union (Withdrawal) Act 2018, s.20(1)).

EU ENTITY. Stat. Def., "an EU institution or any office, body or agency of the EU" (European Union (Withdrawal) Act 2018, s.20(1)).

EU LEGISLATION. See DIRECT EU LEGISLATION.

EU REFERENCE. Stat. Def., "means—

(a) any reference to the EU, an EU entity or a member State,

(b) any reference to an EU directive or any other EU law, or

(c) any other reference which relates to the EU" (European Union (Withdrawal) Act 2018, s.20(1)).

EU REGULATION. Stat. Def., "a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union" (European Union (Withdrawal) Act 2018, s.20(1)).

EU TERTIARY LEGISLATION. Stat. Def., "means—

(a) any provision made under—

(i) an EU regulation,

(ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or

(iii) an EU directive,

by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community, or

(b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),

but does not include any such provision or measure which is an EU directive" (European Union (Withdrawal) Act 2018, s.20(1)).

EXCURSION. "I begin, then, with the meaning of 'excursion' in ordinary language. One of the meanings of 'excursion' given in the Shorter Oxford English Dictionary is 'a pleasure trip taken esp. by a number of people to a particular place'. In the French Larousse online dictionary the meaning of 'excursion' is stated to be 'voyage d'agrément ou d'étude fait dans une région'. The Italian Olivetti online dictionary defines 'escursione' as 'gita a scopo di studio o di piacere', while the Spanish online dictionary of the Real Academia Espanola defines 'excursión' as 'ida a alguna ciudad, museo o lugar para estudio, recreo o ejercicio fisico". Pleasure or study features in almost all these dictionary definitions. Thus in all these various languages 'excursion' or its cognates has a meaning which is something more than merely a trip or journey. In my judgment Mr Beal's interpretation gives no weight at all to the usual meaning of excursion in everyday language. If his interpretation were right the Directive would surely have used a less nuanced term such as 'meeting'.

What is that something more? In my judgment it is that, at the very least, the trip or journey in question is not undertaken for the very purpose of entering into the consumer contract in question. That fits with the purpose of the Directive as explained in the recitals. The recital emphasises that the mischief against which the consumer is to be protected is the element of surprise and unpreparedness which would be occasioned if on such a trip he were to be presented with a legally binding contract to sign. It is that element which also explains why the Directive (although not the

Regulations themselves) exempts from its scope a visit to a consumer's home or place of work which he has himself requested, unless what he is offered is something that he could not reasonably have anticipated.

As a matter of ordinary language, then, I would not characterise a consumer's visit to a community centre for the express purpose of meeting solicitors with a view to instructing them to take on his case as an 'excursion'. Nor, in my judgment, does that conflict with the purpose of the Directive. A consumer who attends such a meeting whose purpose has been announced in advance would not be surprised or unprepared to give instructions. The judge distinguished between an "excursion" which features in the first indent of Article 1.1 and a 'visit' which features in the second indent. She considered that they must be given different meanings. I agree. It was argued on behalf of AtlasJet that whereas 'visit' described travel by the trader, an 'excursion' described travel both by the consumer (away from his home or place of work) and also by the trader (away from his business premises). Up to a point that is true. But a visit by a trader is (from his perspective) a visit for business or commercial purposes, whereas an 'excursion' by a consumer is not. The other language versions use the same distinction of language." *Kupeli v Atlasjet Havacilik Anonim Sirketi* [2017] EWCA Civ 1037.

EXCUSE. See REASONABLE EXCUSE.

EXIT DAY. Stat. Def., European Union (Withdrawal) Act 2018, s.20(1).

EXONERATION. "Where property jointly owned by A and B is charged to secure the debts of B only, A is or may be entitled to a charge over B's share of the property to the extent that B's debts are paid out of A's share. This is known as the equity of exoneration. Although this label, and its origins in the protection given by equity to married women's property rights before the Married Women's Property Act 1882, lends an obscure, even archaic, air, it is best understood as part of the relief more generally given to sureties against the principal debtor. It is as much a feature of contemporary law as it was of equity in the 18th and 19th centuries." *Armstrong v Onyearu* [2017] EWCA Civ 268.

EXPERIENCE OF INSURANCE OR REINSURANCE. "The Excess Loss Clauses promulgated by the Joint Excess Loss Committee (the 'JELC Clauses') are a standard set of clauses in common use in the London market for excess of loss reinsurance. They contain at clause 15 of the version dated 1 January 1997 an arbitration clause which provides for disputes concerning the contract between the parties to be the subject of arbitration in London. Clause 15.5 states: 'Unless the parties otherwise agree the arbitration tribunal shall consist of persons with not less than ten years' experience of insurance or reinsurance.' The question raised on this appeal is whether a Queen's Counsel who has practised as a barrister specialising in the field of insurance and reinsurance for more than 10 years satisfies this requirement. . . . It is a safe inference that a lawyer who has specialised in insurance and reinsurance cases for at least 10 years will have acquired considerable practical knowledge of how insurance and reinsurance business is conducted from meeting and taking instructions from clients, having discussions with and reading reports written by expert witnesses, and from reviewing many insurance contracts and many documents generated in the placing and underwriting of insurance contracts and in the handling of claims made under such contracts. Such practical knowledge will inform and assist their legal analysis and their ability to give effective representation and advice. . . . The conclusions that I would draw are, first, that there is no such thing as

insurance or reinsurance 'itself' which is separate and distinct from the law of insurance and reinsurance and, second, that, unless the parties have some special reason for wishing to exclude lawyers from the pool of candidates eligible for appointment, a person who has practised as a barrister specialising in the field of insurance and reinsurance for more than 10 years would naturally be regarded as qualified for appointment as an arbitrator. In these circumstances I consider that reasonable parties who incorporate the JELC Clauses into their contract of excess of loss reinsurance would understand such a barrister to have the requisite experience of 'insurance or reinsurance' within the natural meaning of those words. I also consider that, if the intention were to restrict the parties' freedom of choice by excluding such a person from eligibility, a clear expression of that intention would be needed, which on any view the clause in question does not contain." *Allianz Insurance Plc v Tonicstar Ltd* [2018] EWCA Civ 434.

EXPRESSLY. "It is unnecessary for us to embark on a detailed examination of the reasoning of the sheriff or the sheriff principal and there is no need for any elaborate exposition of the word 'expressly'. Whatever precise meaning that word may have in different contexts, the intention of Parliament, in the present context, must have been to require something which drew the attention of the tenant to the fact that the term was to be for a period of less than six months. We accept that the provision does not require use of the actual words 'term of less than six months'. But we are satisfied that it is necessary to find some wording with equivalent effect stating that the duration of the agreement is for some explicit period which does not exceed six months or that occupancy is to come to an end at some point within six months. Such a provision would not preclude express reference to the possibility of a further agreement allowing occupancy to continue after that period." *Falkirk Council v Gillies* [2016] ScotCS CSIH 90.

EXTENT. "The word 'extent' can bear many different meanings and shades of meaning, and is broad enough in abstract to cover scope or width of application, but context gives it greater precision. Here, the 'extent' to which reasonably incurred expenses are to be defrayed is more likely to cover amount alone, than to cover when the money should be paid. However, the words qualifying 'such extent', i.e. 'as is reasonable in all the circumstances', at least permit account to be taken of when the money is paid, or is to be paid, in judging whether defraying that amount is reasonable, even if it is not taken into account in judging whether the expenses were or are to be 'reasonably incurred'. Indeed, it is difficult in the end to see that this aspect of the cost of connection is meant to fall outside both aspects of 'reasonableness' in s19(1). Mr Herberg is right, though, that an expense 'reasonably incurred' may not be an expense which in its full extent is reasonably to be defrayed by the customer, for example where reinforcement works required as part of the connection also provide significant material benefits to other consumers, or if there were a significant delay in the connection being made." *UK Power Networks (Operations) Ltd, R. (on the application of) Gas and Electricity Markets Authority* [2017] EWHC 1175 (Admin).

F

FAMILY LIFE. "The leading domestic authority on the ambit of 'family life' for the purposes of Article 8 is the well-known decision of this court in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31; [2003] INLR 31. The court found that a single man of 38 years old who had lived in the UK since 1999 did not enjoy 'family life' with his mother, brother and sister, who were living in Germany as refugees. At para. [14] Sedley LJ accepted as a proper approach the guidance given by the European Commission for Human Rights in its decision in *S v United Kingdom* (1984) 40 DR 196, at 198: 'Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.'

He held that there is not an absolute requirement of dependency in an economic sense for 'family life' to exist, but that it is necessary for there to be real, committed or effective support between family members in order to show that 'family life' exists ([17]); 'neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together', sufficient ([19]); and the natural tie between a parent and an infant is probably a special case in which there is no need to show that there is a demonstrable measure of support ([18]).... In my view, the shortness of the proposed visit in the present case is a yet further indication that the refusal of leave to enter did not involve any want of respect for anyone's family life for the purposes of Article 8. A three week visit would not involve a significant contribution to 'family life' in the sense in which that term is used in Article 8. Of course, it would often be nice for family members to meet up and visit in this way. But a short visit of this kind will not establish a relationship between any of the individuals concerned of support going beyond normal emotional ties, even if there were a positive obligation under Article 8 (which there is not) to allow a person to enter the UK to try to develop a 'family life' which does not currently exist." Entry Clearance Officer, *Sierra Leone v Kopoi* [2017] EWCA Civ 1511.

FEBRILE FIT. "A 'febrile fit' is a fit, convulsion or seizure experienced by a child with a fever. More often than not the underlying fever is caused by a benign viral illness and is self-limiting—in other words, it resolves itself without any long-term effects." *XYZ v Maidstone & Tunbridge Wells NHS Trust* [2016] EWHC 2687 (QB).

FELLING. Stat. Def., 'includes intentionally killing a tree', Forestry and Land Management (Scotland) Act 2018 s.22.

FEY. "What the second defender meant by that appears at page 71 of the transcript (MS 713): 'He was always just a fey wee boy …very boyish and free …a little bit determined, and hard, a little bit hard work.' I take 'fey' in this context to mean

'high-spirited' (see eg Chambers' Twentieth Century Dictionary)." *Anderson v John Imrie and Antoinette Imrie* [2018] ScotCS CSIH 14.

FILING. "The claim form in an application to quash a decision of a Minister must be filed at the Administrative Court, 8APD paragraphs 9.2 and 22.3. 'Filing' means delivering a document by post or otherwise to the court office, CPR 2.3(1). The opening days and hours of the court offices are specified in 2APD paragraph 2.1." *Croke v Secretary of State for Communities and Local Government* [2016] EWHC 2484 (Admin).

FILING SYSTEM. Stat. Def., Data Protection Act 2018 s.3.

FINAL DETERMINATION. "In the course of its decision, the Court of Appeal made clear that the word 'determination' used in section 77 of the County Courts Act 1984 was equivalent to the phrase 'judgment or order' in section 16 of the Senior Courts Act 1981. These are the two statutory provisions, one for the county court and the other for the High Court, which permit or authorise appeals to the Court of Appeal from those courts respectively. One can therefore see the word 'determination' being used, as it were, as equivalent to the word 'judgment' or 'order'. But of course nothing is said at any stage about any kind of 'final determination', which is the phrase with which I am concerned.... So in my judgment, the word 'final' in the phrase 'final determination' must refer to a point in time when that determination can no longer be changed. In my judgment, it must therefore be referring either to the end of the possibility of any appeal or, if sooner, to a point at which the losing party at first instance acknowledges that there will be no appeal or no further appeal. Accordingly, I hold that on the true construction of this undertaking, the undertaking has not yet come to an end." *Sberbank of Russia v Ramljak* [2018] EHC 348 (Ch).

FINANCIAL SERVICES. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.61.

FINANCIAL PRODUCTS. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.61.

FIT AND PROPER PERSON. "There are no provisions, either in statute or case-law, limiting or defining the bases upon which a licensing authority may conclude that an applicant is not a 'fit and proper person' to hold a licence. Such decisions are, of course, subject to the usual controls on administrative action: taking account of relevant considerations and avoiding irrelevant considerations; perversity; Wednesbury unreasonableness and the like. Beyond those controls, the authority enjoys a wide measure of discretion. It is not a necessary prerequisite that an applicant should have been convicted of a criminal offence (*Coyle v Glasgow City Council* 2012 SLT 1018). A licensing authority has a broad discretion when exercising their judgment. They are entitled to place weight on the nature and cumulative impression of a series of circumstances (*McKay v Banff and Buchan Western Division Licensing Board* 1991 SLT 20 at page 24G-H; *Hughes v Hamilton District Council* 1991 SC 251). They are also entitled to expect the applicant to provide information, explanations, or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he is not a fit and proper person. In this respect, there is a practical onus resting on the applicant (*Chief Constable of Strathclyde v North Lanarkshire Licensing Board* 2004 SC 304 at paragraph [23]; *McAllister v East Dunbartonshire Licensing Board* 1998 SC 748 at page 757G-H; *Calderwood v Renfrewshire Council* 2004 SC 691 at paragraph 18)." *Glasgow City Council v Bimendi* [2016] ScotCS CSIH 41.

FLIGHT. "The judge said that 'flight', for the purposes of section 76(1), is confined to 'journeys with aircraft passing over other property and the associated take-off and landing'. He therefore confined 'flight' in this context to lateral travel from one fixed point to another. He gave no justification or explanation for that limitation. I can see no justifiable basis for it. The statutory definition in section 105(1) of the CAA 1982 contains no such limitation unless it is to be found in the word 'journey'. The word 'journey', however, has no such usual limitation." *Peires v Bickerton's Aerodromes Ltd* [2017] EWCA Civ 273.

FLUFF. "The claims concern material known in the industry as 'fluff'. Put very simply, household rubbish (or black-bag waste) that goes to landfill is placed in cells lined with a liner to protect the environment. The practice of landfill site operators is to sort the waste before it is first placed in a cell so that the layer on the base of the cell does not contain sharp or heavy objects which might puncture the liner. This layer, typically 2 metres deep, has come to be known as 'base fluff'. A similar practice is adopted on the sides of the cell as the cell is filled up, and this material has come to be known as 'side fluff'." *Veolia ES Landfill Ltd, R. (on the application of) v HM Revenue & Customs* [2016] EWHC 1880 (Admin).

FRAGMENTED. "In the first place, that seems the better reading as a matter of ordinary English. That is not only because of the use of the plural but also because the word 'fragmented' naturally connotes a whole which has been broken into parts and thus necessarily implies plurality." *Lidl Ltd v Central Arbitration Committee* [2017] EWCA Civ 328.

FREEZING (FUNDS). Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.60.

FUGITIVE. "'Fugitive' is not a term used in the statutory scheme, but a common law principle that, in order to resist extradition on the basis of passage of time, an accused person cannot rely upon delay which he himself has caused, as developed in particular in *Kakis v Government of the Republic of Cyprus* [1973] 1 WLR 779 and *Gomes and Goodyer v Government of the Republic of Trinidad and Tobago* [2009] UKHL 21. A person has fugitive status [if] he has knowingly placed himself beyond the reach of legal process (*Wisniewski* at [59]). Before this principle applies, a person's status as a fugitive must be established to the criminal standard (*Gomes and Goodyer* at [27])." *Stryjecki v District Court in Lublin, Poland* [2016] EWHC 3309 (Admin).

FUNDAMENTALLY DISHONEST. "As noted above, one-way costs shifting can be displaced if a claim is found to be 'fundamentally dishonest'. The meaning of this expression was considered by His Honour Judge Moloney QC, sitting in the County Court at Cambridge, in *Gosling v Hailo* (29 April 2014). He said this in his judgment: '44. It appears to me that this phrase in the rules has to be interpreted purposively and contextually in the light of the context. This is, of course, the determination of whether the claimant is 'deserving', as Jackson LJ put it, of the protection (from the costs liability that would otherwise fall on him) extended, for reasons of social policy, by the QOCS rules. It appears to me that when one looks at the matter in that way, one sees that what the rules are doing is distinguishing between two levels of dishonesty: dishonesty in relation to the claim which is not fundamental so as to expose such a claimant to costs liability, and dishonesty which is fundamental, so as to give rise to costs liability. 45. The corollary term to 'fundamental' would be a word with some such meaning as 'incidental' or 'collateral'. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral

matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty.' In the present case, neither counsel sought to challenge Judge Moloney QC's approach. Mr Bartlett spoke of it being common sense. I agree." *Howlett v* [2017] EWCA Civ 1696.

FUNDS. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.60.

G

GABBRO. "Gabbro is a dense, coarse-grained igneous rock." *Community Against Dean, R. (on the application of) v Shire Oak Quarries Ltd* [2017] EWHC 74 (Admin).

GALILEO PROGRAMME. Stat. Def., Public Regulated Service (Galileo) Regulations 2018 reg.2.

GAS TRANSPORTER. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GASIFICATION. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GCHQ. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

GDPR. Stat. Def., Data Protection Act 2018 s.3.

GENETIC DATA. Stat. Def., Data Protection Act 2018 s.205.

GILT. Stat. Def. ("UK government sterling denominated bonds issued by or on behalf of the Treasury"), Cash Ratio Deposits (Value Bands and Ratios) Order 2018 art.2.

GOVERNMENT DEPARTMENT. Stat. Def., Data Protection Act 2018 s.205.

GROSS SALES INCOME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

GROUND LOOP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GROUND SOURCE HEAT PUMP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GROUP. "Where it is in error is firstly in assuming that because an expression must be read eiusdem generis in one context, that defines its meaning for other contexts in which there is no requirement to read the same expression 'eiusdem generis' with any other words. The word 'group' is a common English word, capable of applicability in a wide range of circumstances. Where it is qualified by the adjectival use of 'patient' then the group has plainly to consist of those who are identified as 'patients' in some relevant respect, but otherwise the breadth of the word 'group' remains. The purpose of the eiusdem generis principle is to limit what would otherwise be recognised as the generality of the wording in a particular context. It cannot be used to define the meaning of the expression where there are no words which suggest that the meaning should be limited in that way. Consider the example of the expression: 'cats, dogs and other animals'. In this expression, 'other animals' has to be understood in the context of 'cats' and 'dogs'. 'Other animals' will thus be domestic animals. Remove the words 'cats, dogs and other' and the word is simply 'animals'. Absent specific context, there would be no warrant in any statute or instrument which referred to the composite expression in one place, and the unqualified word 'animals' in another, for reading the latter as limited to domestic animals. It would retain the generality of meaning which it was the very purpose of the word 'other' to restrict by reference to specific examples

in the list of which it formed part." *Community Pharmacies (UK) Ltd, R. (on the application of) v National Health Service Litigation Authority* [2016] EWHC 1595 (QB).

GSM SYSTEM. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

GUARANTEED OVERTIME. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

H

HARASSMENT. "Section 7 does not define 'harassment'. It merely provides guidance as to the interpretation of the operative provisions. Further guidance has been provided by the Supreme Court in *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well-understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'" *Barkhuysen v Hamilton* [2016] EWHC 2858 (QB).

"The use of the words 'alarm and/or distress' in Mr Hudson's submission is a reflection of s 7(2) of the 1997 Act, which provides that 'references to harassing a person include alarming the person or causing the person distress'. This is not a definition of the tort. It is merely guidance as to one element of it. Nor is it an exhaustive statement of the consequences that harassment may involve. The Supreme Court gave further guidance in *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well-understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'" *Hourani v Thomson* [2017] EWHC 432 (QB).

HEALTH CARE PROFESSIONAL. Stat. Def. ("a registered medical practitioner or a registered nurse"), Short-term Holding Facility Rules 2018 rule 2.

HEALTH PROFESSIONAL. Stat. Def., Data Protection Act 2018 s.204.

HEALTH RECORD. Stat. Def., Data Protection Act 2018 s.205.

HEALTH SERVICE USE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

HEAT LOSS CALCULATION. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

HEAT METER. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

HIGH COURT. "Is the High Court comprised (among others) of Masters of the Queen's Bench Division? No. Section 4 of the SCA 1981 provides a list of those who comprise the High Court, and Masters are not on the list." – but note that the case concludes that proceedings before the Master are proceedings in the High Court – *Abdule v The Foreign And Commonwealth Office* (national security – jurisdiction and status) [2018] EWHC 692 (QB).

HIGHWAY. "There is no statutory definition of 'highway' either in the 1980 Act, save for the very limited provision in section 328 quoted above, or in the GLA Act. It is therefore necessary to have regard to its meaning at common law. The commentary on section 328 in the Encyclopaedia of Highways Law and Practice says at para 2-484.2: 'This section does not define the term "highway" and it is necessary

therefore, whenever the meaning of this word is in issue, to refer to the common law rules. Stated shortly, a highway may be defined as a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not on sufferance or by licence.'" *London Borough of Southwark v Transport for London* [2017] EWCA Civ 1220.

HOLDING ROOM. Stat. Def., Short-term Holding Facility Rules 2018 rule 2.

HOMOLOGATION. "The classic exposition of the doctrine of homologation is to be found in Bell's Principles 10th edition at paragraph 27. 'Homologation … is an act … approbatory of a preceding engagement, which in itself is defective or informal … either confirming or adopting it as binding. It may be expressed, or inferred from circumstances. It must be absolute, and not compulsory, nor proceeding on error or fraud, and unequivocally referable to the engagement; and must imply assent to it, with full knowledge of its extent and of all the relative interests of the homologator.' The effect of homologation is to remove the right to resile from the informal agreement. The actings must be carried out in the full knowledge of all matters relevant to the homologator's rights and interests. Most obviously this includes knowledge of the right to resile." *Khosrowpour v Mackay* [2016] ScotCS CSIH 50.

HORSE. Stat. Def. ("includes an ass, mule or hinny"), Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

HOUSE. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

I

IDENTIFIABLE LIVING INDIVIDUAL. Stat. Def., Data Protection Act 2018 s.3.

IDENTIFICATION NUMBER. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

IDENTIFIES. "This appeal turns on the meaning of 'identifies' and on the meaning of the notice to which that word is being applied. Both are questions of law, although the answers may be informed by background facts. The essential question before us is what background facts may be relevant for this purpose. In my opinion, a person is identified in a notice under section 393 if he is identified by name or by a synonym for him, such as his office or job title. In the case of a synonym, it must be apparent from the notice itself that it could apply to only one person and that person must be identifiable from information which is either in the notice or publicly available elsewhere. However, [to] resort to information publicly available elsewhere is permissible only where it enables one to interpret (as opposed to supplementing) the language of the notice. Thus a reference to the 'chief executive' of the X Company may be elucidated by discovering from the company's website who that is. And a reference to 'CIO London Management' would be a relevant synonym if it could be shown to refer to one person and that person so described was identifiable from publicly available information. What is not permissible is to resort to additional facts about the person so described so that if those facts and the notice are placed side by side it becomes apparent that they refer to the same person." *Financial Conduct Authority v Macris* [2017] UKSC 19.

IMPROPER. "Be that as it may, in this case there was nothing before the judge by way of expert evidence from the defence expert, for example, which could have justified the epithet 'improper'. The way it was put in the defence submissions was that the expert had paid "insufficient care". The prosecution's expert's explanation, set out in the defence's Skeleton Argument before the judge, was that he had missed the fact that the image in question was in a 'Thumbs.db' file and that 'I missed that in the counting process'. This cannot be characterised as a clear and stark error, adopting Coulson J's formulation, or at least not in the absence of a qualitative assessment of how serious an error this was. We simply do not know, and more importantly the judge did not know, whether this is an easy mistake to make, or whether it is the sort of mistake a first week trainee computer expert would not be expected to make." *R (Director of Public Prosecutions) v Aylesbury Crown Court* [2017] EWHC 2987 (Admin).

IN ANY WAY CONNECTED WITH. "The words used 'in any way connected with' the sale of the swap given their natural and ordinary meaning are very broad. There is nothing in the language or in the letter as a whole to suggest that the parties intended to limit this to claims or liabilities which were legally or causally connected to the sale of the swap. The words 'in any way' serve to reinforce a broad

interpretation to the words 'connected with'. In my view a claim that the Bank has not discharged its obligations in relation to carrying out the review of the consequential loss incurred by the claimant as a result of being sold a swap, is a claim which is, in the ordinary sense of the words, 'connected with' the sale of the swap. No review would be necessary unless the claimant fell within those category of customers who had been sold a swap. The review arises only as a result of having entered into a swap and the purpose of the review is to determine whether any compensation is due in respect of the (alleged) losses suffered as a result of the sale. The claim that the review was carried out in a way which breached the claimant's rights is a challenge to the assessment of the loss suffered as a result of the sale and is therefore "connected with" the sale of the swap on a literal reading." *Cameron Developments (UK) Ltd v National Westminster Bank Plc* [2017] EWHC 1884 (QB).

IN CHARGE FOR THE TIME BEING. "In our judgment, the words 'in charge for the time being' should not be understood in a particularly narrow (or indeed particularly expansive) sense. These are ordinary words which are capable of applying to a range of situations. The judgment in any case is very fact-sensitive, and it is one for the justice or the sheriff to make. For the reasons we have given, we have concluded that the concept of being in charge relates to whether the person in question has responsibility for the dog. It follows from what we have said that we would consider that it is at least possible for a person who walks a dog on a regular basis, and who has responsibility for the dog during that time, to be 'in charge for the time being' for the purpose of section 4B. There are likely to be exceptions to that general proposition, for example, where the person is walking the dog purely as the agent of another, in which case that person may not be 'in charge' for the purpose of that provision. The language of the statute is broad enough to encompass anyone who, for whatever reason and in whatever way, is in charge of the dog for the time being. It also follows that we reject Mr Ley-Morgan's submission that a volunteer cannot be a person in charge – such a person can be.

So far as timing is concerned, we reject the Secretary of State's submission that 'for the time being' must mean at the time of the seizure. Although that would, as a matter of timing, potentially include Mrs McCann who had contact with Sky while she was kennelled before she was seized, there are other situations in which it would not be appropriate to consider the person in charge at the moment of seizure. For example, it could be that the owner of the kennels where the dog has been housed since being seized wishes to apply (as in 'Stella's case'). Again, it may be that the erstwhile partner of the owner who had been the joint keeper with the owner seeks keepership where that person was not 'in charge' at the moment of seizure, perhaps because the relationship had recently broken down. Such a person may be able to demonstrate a track record of being in charge of the dog. There is no good reason, consistent with the statutory purpose, why such persons should be excluded from section 4B(2A)(a). There are, however, some temporal limits on what 'for the time being' means. We note that Ms McGahey did not submit that the phrase could be interpreted to include proposed future contact. She was right not to do so, because the concept involves contact in the past or present. It cannot extend to the future." *Webb v Avon and Somerset Constabulary* [2017] EWHC 3311 (Admin).

IN PARTICULAR. "Ms Anderson submitted that 'in particular' should bear its natural and ordinary meaning, but in my view that submission does not assist. There are two natural and ordinary meanings of the term. Similar problems arise with

prepositions such as 'including'. In my judgment, the real question which always arises in this sort of case is as to how the term at issue should be construed in its particular context." *JM (Zimbabwe), R. (on the application of) v Secretary of State for the Home Department* [2016] EWHC 1773 (Admin).

IN SITU REPLACEMENT. "The issue of construction which divides the parties is the meaning of 'in situ replacement' in claim 1 of the 163 patent and claim 1 of the 287 patent. It is common ground that the term has the same meaning in all the claims. Kymab's case was and remains that an in situ replacement requires a deletion (in the sense of a physical removal from the genome) of the murine variable gene segments, coupled with the insertion of the human variable segments in the same place. Regeneron's case was that all that is required by 'in situ replacement' is a replacement 'in the position of' the murine variable gene segment, and does not require deletion, a process which it described as 'positional replacement'. The issue is relevant to infringement because, in the Kymab constructs, the murine variable segments are inverted so that they appear in a different place in the genome where they substantially cease to function, but are not physically removed or deleted.... We can see no technical reason why the skilled person would understand that the patentee was using the phrase 'in situ replacement' to mean more than positional replacement. The specification does not contain any teaching that the mouse segments must necessarily be deleted or inactivated. This is made clear at [0125] of the specification which points out that the process may give rise to hybrid heavy chains, 'but it is preferable to proceed with subsequent steps that will eliminate the remainder of the mouse variable segments'. The suggestion that removal of all the mouse segments is 'preferable' makes it clear that mouse segments can be tolerated." *Regeneron Pharmaceuticals, Inc v Kymab Ltd* [2018] EWCA Civ 671.

INACCURATE (DATA). Stat. Def., Data Protection Act 2018 s.205.

INCIDENT. Stat. Def. ("any event having an actual adverse effect on the security of network and information systems"), Network and Information Systems Regulations 2018 reg.1.

INDEMNITY. See ADEQUATE INDEMNITY.

INDIRECT ENCOURAGEMENT. "'Indirect encouragement' in s.2(3)(a) does not, in our view, need to be replaced by 'necessary implication', a phrase which is arguably less clear. In directing the jury on this point the judge said: 'Things which are likely to be understood by members of the public as indirectly encouraging them to commit, prepare, or instigate acts of terrorism are likely to include things which glorify the commission in the past, future, or generally of terrorist acts, and encourage that act to be copied. You decide whether that is what appears in these videos.' That explanation seems to us as being perfectly clear and adequate. As to 'some or all' in s.2(3) and 'one or more' in s.2(6) we do not think that in the circumstances of this case where the dissemination had been to two individuals, that any further explanation was required. Finally, the suggestion that 'with a view to' should have been explained as meaning 'with intent to' overlooks both the fact that the suggested phrase provides no meaningful additional explanation and the fact that in any event, the Crown was relying on s.2(2)(d), not s.2(2)(f)." *Ali, R v* [2018] EWCA Crim 547.

INDOORS. Stat. Def. ("inside premises which—(i) have a ceiling or a roof; and (ii) except for any doors, windows or passageways, are wholly enclosed"), Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

INFORMATION NOTE. Stat. Def., Data Protection Act 2018 s.181.

INJUNCTION. See SPRINGBOARD INJUNCTION.

INJURY OR DAMAGE. Stat. Def., Space Industry Act 2018 s.69.

INSTALLATION. Stat. Def. ("includes any works or object"), Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018 reg.2.

INSURANCE. See EXPERIENCE OF INSURANCE AND REINSURANCE.

INTEGRITY. "Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in Williams and I disagree with the observations of Mostyn J in Malins. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted. In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. I agree with Davis LJ in Chan that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: 'Well you can always recognise it, but you can never describe it.' The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in Hoodless have met with general approbation. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors: i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (*Emeana*); ii) Recklessly, but not dishonestly, allowing a court to be misled (*Brett*); iii) Subordinating the interests of the clients to the solicitors' own financial interests (Chan); iv) Making improper payments out of the client account (*Scott*); v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (*Newell-Austin*); vi) Making false representations on behalf of the client (*Williams*)." *Wingate v The Solicitors Regulation Authority* [2018] EWCA Civ 366.

INTELLIGENCE SERVICE. Stat. Def., Data Protection Act 2018 s.82.

INTENDS. See PROPOSES.

INTERCEPT. [*at end of definition, add:*] Investigatory Powers Act 2016 s.4.

INTEREST. "The 2006 Act contains no definition of 'interest', or what constitutes being 'interested in' a proposed transaction. The question therefore has to be answered by reference to the case law. We agree with Mr Vineall that the question, in the particular circumstances of this case, is whether the Tribunal was correct in law to conclude that, by virtue of the fact that Ms Burns was, at the very time the proposed transaction was being considered by her investment committee, soliciting Vanguard for employment or appointment, she was 'in any way, directly or indirectly interested' in the proposed transaction between MGM and Vanguard. . . . These points were again emphasised by Lord Upjohn, as he had by then become, in *Boardman v Phipps* [1967]

2 AC 46 at 123-124. Referring to Lord Cranworth's statement of principle in Aberdeen Railway, Lord Upjohn said at 124B: 'The phrase "possibly may conflict" requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.' This passage shows that the relevant test is an objective one, and that 'a real sensible possibility of conflict' suffices. It is clearly not necessary that the possibility should have already matured into an actual and existing conflict of interest. See too the speech of Lord Cohen at 103G-104A." *Burns v The Financial Conduct Authority* [2017] EWCA Civ 2140.

"The use of the word 'interest' to describe the sums payable in both sets of circumstances indicates that, as a matter of language and common legal usage, it is not confined to cases in which the payment accrues due prospectively as it would do under a loan. It is therefore common ground on this appeal that statutory interest is 'interest' within the meaning of s.874 and that the administrators' argument that it is not 'yearly interest' turns on the meaning and effect of the word 'yearly'. The point is in any event concluded by authority because in *Riches v Westminster Bank Ltd* [1947] AC 390 the House of Lords decided that a sum of money awarded as interest under s.3(1) of the Law Reform (Miscellaneous Provisions) Act 1934 (now re-enacted as s.35A SCA 1981) as part of a judgment sum was 'interest of money' within Schedule D of the Income Tax Act 1918 so as to be payable under deduction of tax under rule 21 of the All Schedules Rules of the Act. ... In my view it would be wrong to treat such statutory interest under the Insolvency Rules as a short-term liability of this kind. Unlike, for example, the indebtedness under the local Act in *Gateshead Corporation v Lumsden* which could have been called in at any time, the obligation of the administrators to pay interest on the proved debts was unlimited in point of time under rule 2.88(7) (and now rule 14.23(7)), was calculated (where the Judgment Act rate applies) by reference to a per annum rate of interest, contemplated a period of administration which could in many cases last over a prolonged period of time and did in fact endure for a number of years. It did therefore satisfy the definition in *Bebb v Bunny* in that it was payable from year to year whilst accruing from day to day. Unless the fact that it did not accrue prospectively in real time is fatal to the contention that it is yearly interest which, in the light of the authorities, it is not, I can see nothing in the Insolvency Rules or the other relevant surrounding circumstances which prevents it from being treated as the long-term liability which it in fact was." *Revenue And Customs v Lomas (Administrators of Lehman Brothers International (Europe))* [2017] EWCA Civ 2124.

INTERESTED. "The question is, therefore, what the words 'interested in' mean in clause 13.2.3 of the contract interpreted in accordance with conventional usage and I find it impossible to say of a person holding shares in a company that he or she is not 'interested in' the business of the company. Conventionally those words have that meaning not merely in common parlance and in dictionaries but also in authority." *Tillman v Egon Zehnder Ltd* [2017] EWCA Civ 1054.

INTERNATIONAL MARITIME TRAFFIC. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

INTERNATIONAL OBLIGATION OF THE UNITED KINGDOM. Stat. Def., Data Protection Act 2018 s.205.

INTERNATIONAL ORGANISATION. Stat. Def., Data Protection Act 2018 s.205.

INTRINSIC. "My difficulty is with the word 'intrinsic' itself and what it means in this context. It is possible to describe things or people as having certain intrinsic qualities or characteristics, but it is a more elusive term when used as a descriptor of a relationship between two transactions. Take Lord Hobhouse's example of a pension scheme mis-sold to a group of investors in the same venture by use of the same document. On one interpretation of the Court of Appeal's formula it could be said that there was no 'intrinsic' relationship between the matters giving rise to the investors' claims, because their only connection was an 'extrinsic' relationship with the third party who sold the pension to all of them. If so, the addition of sub-clauses (iii) and (iv) will not have helped to resolve the point of difference between Lords Hoffmann and Hobhouse; and if Lord Hoffmann's view is to be preferred, there would be no right to aggregate in such a case. It is hard to suppose that the Law Society so intended when it introduced the new sub-clauses." *AIG Europe Ltd v Woodman* [2017] UKSC 18.

INVENTED NAME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

ISOLATED. "The word 'isolated' is not defined in the NPPF. I agree with the Defendants' submission that 'isolated' should be given its ordinary objective meaning of 'far away from other places, buildings or people; remote' (Oxford Concise English Dictionary)." *Braintree District Council v Secretary of State for Communities and Local Government* [2017] EWHC 2743 (Admin).

J

JUST. "The word 'just' means just in all the circumstances, bearing in mind that the purpose of such orders is the advancement of the public interest in confiscating the proceeds of crime." *Mundy, R v* [2018] EWCA Crim 105.

JUST AND EQUITABLE. "Thirdly, the phrase 'just and equitable' does not confer a general power on tribunals to award what they think ought to be awarded in a form of 'palm tree justice.' As Lord Steyn made clear in *Dunnachie*, that phrase simply addresses the fact that, in the relatively informal setting of an employment tribunal, it may not be appropriate to expect an unrepresented litigant to produce a detailed schedule of loss of the type that might be expected in ordinary civil litigation. That phrase is not broad enough to confer jurisdiction to award compensation for injury to feelings, as the EAT appears to have thought in Brassington. If it were that broad, there would be jurisdiction to make such an award in unfair dismissal cases, which *Dunnachie* holds authoritatively that there is not." *Gomes v Higher Level Care Ltd* [2018] EWCA Civ 418.

K

KEEPS. "Although there is no statutory interpretation within the Animal Welfare Act 2006 of the word 'keeps' the starting point is that the word should be given its ordinary natural meaning. By such a meaning a person may keep an animal by having actual physical possession but also by requesting another to keep it for them. The word includes an assumption of a level of control over the animal whether at the Applicant's home or at the home of another. In either event the animal is still being kept by the Applicant." *Wright v The Reading Crown Court* [2017] EWHC 2643 (Admin).

L

LAND. Stat. Def. (disapplying Interpretation Act 1978 definition), Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

LAND TRANSACTION. Stat. Def., Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 s.3.

LANDING AND TAKE-OFF CYCLE. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

LASER. "The Bill does use the term 'laser beam', but I can assure noble Lords that the Bill is not limited to any particular type of laser and that all variants of laser should be captured by this. Following the helpful contributions of the noble and gallant Lord, Lord Craig, at Second Reading, I sought further expert clarification on the definition of a laser, including from the Department for Transport's chief scientific adviser. All types of lasers emit focused beams. Therefore, despite the varying properties that different types of lasers will have, all will still produce a beam, and it is this beam that will dazzle or distract the person in control of the vehicle. The term 'laser' would cover the pulse and burst laser products that the noble and gallant Lord referred to. These products still emit a laser beam, just of a shorter duration. Short-duration laser beams can be very intense and transmit as much power in the pulse as a lower-power continuous laser, so I agree it is important that these are included in the Bill. We expect the courts to interpret 'laser' with this wide definition. The term 'laser' is generally used to refer to the machine or equipment used to produce a particular form of light—in other words, to the device itself. This is how the term has previously been used in legislation, including the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Work at Height) Regulations 2010 and the Control of Artificial Optical Radiation at Work Regulations 2010. It is also how the Oxford English Dictionary defines it. Therefore, we do not believe that adding a reference to 'device' is necessary. Our legal advice is that the term 'beam' is better than 'device' as it refers to the light emitted by the equipment and it is this which can dazzle or distract. It is for these reasons that the clause uses the term 'laser beam'. On the noble and gallant Lord's question about power, this is not included in the Bill because it will be the beam dazzling or distracting, or being likely to do so, that will be an offence, regardless of the power." Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) speaking in Committee on Bill for the Laser Misuse (Vehicles) Act 2018 on 23 January 2018.

LASER BEAM. Stat. Def., Laser Misuse (Vehicles) Act 2018 s.3.

LAUNCH (SPACE CRAFT). Stat. Def., Space Industry Act 2018 s.69.

LEGAL ADVISER. Stat. Def. ("a detained person's counsel, representative or solicitor, and includes a clerk acting on behalf of that solicitor"), Short-term Holding Facility Rules 2018 rule 2.

LEGAL PROCEEDINGS. "The preliminary issue here is the true interpretation of the words 'legal proceedings' in paragraph 10 of Schedule 7 to the DPA (set out in the

Appendix to this judgment). In my judgment, these words refer to legal proceedings in any part of the UK. Parliament has not expressly limited the words 'legal proceedings' to proceedings in the UK. But in general it is presumed that Parliament does not intend to legislate for events which occur outside the territory of the relevant parts of the United Kingdom. That presumption is reinforced by the fact that, in creating the Legal Professional Privilege Exception, Parliament was exercising the member state option in Article 13(1)(g) of the Directive. It could, therefore, legislate only for measures to safeguard 'the rights and freedoms of others'. Privilege is a fundamental human right (see *R. (o/a Morgan Grenfell Ltd v Special Commissioners of Income Tax* [2003] 1 AC 563). In the context of a member state option, those rights must be the rights recognised by the relevant member state under its own law. So, when paragraph 10 refers to legal professional privilege which may be recognised in legal proceedings, it means proceedings in any part of the UK. That is the only form of privilege which the domestic rules of the law of any part of the UK recognise." *Dawson-Damer v Taylor Wessing LLP* [2017] EWCA Civ 74.

LESS FAVOURABLE TREATMENT. "First, 'less favourable treatment' requires no more than the identification by the court of some denial of an advantage, benefit or choice which was or would have been afforded to the comparator. It is a concept separate from that of impact or damaging consequences. For example, the denial of a reference for the purposes of future employment would qualify, whether or not that reference would have been helpful. To my mind, the clearest analysis of these concepts is to be found in the Opinion of Lord Hoffmann in *Chief Constable of West Yorkshire Police v Khan* [2001] 1 WLR 1947, paragraphs 51–53 (but see also *Shamoon* at paragraphs 34–35).

Secondly, although there has been a tendency in some places to equate 'less favourable treatment' with that of 'detriment', they are conceptually distinct (see Lord Hoffmann in *Khan*, paragraph 53). That said, as Lord Hoffmann continues: 'But, bearing in mind that the employment tribunal has jurisdiction to award compensation for [there is a typographical error in the Law Report] injury to feelings, the courts have given "detriment" a wide meaning. In *Ministry of Defence v Jeremiah* [1980] QB 87, 104 Brightman LJ said that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".' [Brightman LJ's dictum was also approved by the House of Lords in *Shamoon*]." *Interim Executive Board of X School v Chief Inspector of Education, Children's Services and Skills* [2016] EWHC 2813 (Admin).

LIABILITIES. "*Powys* raises a single ground of appeal, namely that the conclusions reached by the judge on the law were wrong. In particular, it is said that the judge erred in holding that the word 'liabilities' under article 4 of the 1996 Order encompassed liabilities arising under legislation which had not yet come into force.... The judge accepted that there had been no decided case where the word 'liabilities' in the context of transfer orders had been held to include a potential liability arising from a change of law after the date of the transfer. Nevertheless, he gave three reasons for distinguishing *Transco*.... In his speech in *Transco*, with which Lord Walker and Lord Mance agreed, Lord Neuberger made clear (at [35]) that contingent liabilities which existed at the time would be liabilities within the 1948 and 1986 Acts. Accordingly, had Part IIA been in force in 1996 when the transfer from Brecknock to Powys took place, I consider that Brecknock would have been subject to a contingent

liability under Part IIA which would have passed to Powys under Article 4 of the 1996 Order with the result that Powys would be an appropriate person." *Powys County Council v Price* [2017] EWCA Civ 1133.

LIKELY. "'Likely' in s.2(3) is an ordinary, comprehensible word; replacing it with 'probable' would not have assisted the jury further." *Ali, R v* [2018] EWCA Crim 547.

"I have applied careful judgement in determining whether an adverse effect is 'likely' in considering the Statutory Question. I have also taken advice from Counsel on how this term might be interpreted by the Court. A literal definition of 'likely' is an event which has in excess of a 50/50 probability of occurrence – [i.e.] more likely than not. However, in some circumstances 'likely' can include events with a lesser probability. I consider that adopting the former of these definitions would create a hurdle too high in the context of applying a reasonable judgement. Therefore I have applied a lower hurdle so as to include events which are a realistic possibility. This is consistent with a recent legal judgement which referred to "likely" being "a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case" [per Snowden J in *FCA v. Da Vinci* (2015) EWHC 2401 at paragraphs 257-258 referring to Lord Nicholls in *Re H* [1996] AC 563]." *Barclays Bank Plc And Woolwich Plan Managers Ltd, Re* [2018] EWHC 472 (Ch).

LIQUIDATED PECUNIARY CLAIM. For different opinions on the meaning of this term in s.29 of the Limitation Act 1980 see *Creggy v Barnett* [2016] EWCA Civ 1004.

LIQUIDITY. "'Solvency' is a word that can have various significations, but for present purposes we intend it to mean balance sheet solvency: a comparison of total assets and total liabilities, with a view to determining whether the overall value of the assets is adequate to meet the liabilities. 'Liquidity', by contrast, relates to the ability of a company or other trading entity to meet its debts as they fall due; it is generally dependent on cash flow." *Liquidators of Grampian MacLennan's Distribution Services Ltd Reclaiming Motion by, v Carnboe Estates Ltd* [2018] ScotCS CSIH 7.

LOAN. "Peer-to-peer loan". Stat. Def., Income Tax Act 2007 s.412I as inserted by the Finance Act 2016 s.32.

LOCAL AUTHORITY. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

M

MAIN NAVIGABLE CHANNEL. "The first issue is the proper construction of the phrase 'main navigable channel' in section 4 of the 1971 Act. . . . What then is the proper construction of the phrase 'main navigable channel' in Part II of the 1971 Act? It seems to me that taking into account both the legislative and the policy context and the purpose of the 1971 Act itself, it cannot be correct that the phrase 'main navigable channel' is confined to the deepest part of any river, canal or navigation which is used from time to time as a thoroughfare or fairway. It seems clear from the Preamble to the 1971 Act that its purpose or aim was the imposition of a licensing system in order properly to regulate the use of waterways and to raise revenue for the provision of related services. With that context in mind, Mr Moore's construction would make a nonsense of the control and registration provisions contained in the 1971 Act and would render their operation all but impossible. It would be surprising if 'main navigable channel' were construed in a way which only required licences to be obtained in respect of a narrow band of unmarked and undefined water in the centre, or perhaps not in the centre of the river or canal. It would render the entire regime of the 1971 Act unworkable. On that basis, it seems to me that the statutory context is such that Mr Ravenscroft's interpretation cannot be correct. . . . It seems to me that the power in section 4(2) of the 1971 Act is not apt to enable the production of a map by order of the Secretary of State each time the route of the thoroughfare of a waterway changes. If Mr Moore were right, it would be necessary to conduct frequent surveys of all inland waterways for which CRT is responsible in order to obtain up to date details of the position of the deepest channel and to record the same on a map made by order of the Secretary of State. It seems to me that the map produced to Mr Moore as a result of his Freedom of Information request in 2011 takes the matter no further forward. It is not suggested that the map was produced pursuant to section 4(2) of the 1971 Act or that anything can be gleaned from the comments made by the Customer Service Co-Ordinator.

I also agree with Mr Stoner that his wider construction is consistent with the existence of the strict liability offences in sections 5(2) and 9(4) of the 1971 Act. If 'main navigable channel' were construed in the way which Mr Moore suggests there would be no certainty as to whether those offences had been committed. In my judgment, it cannot have been Parliament's intention to create strict liability offences the parameters of which are uncertain. Further, although I place much less weight upon it, I also agree with Mr Stoner that his wider construction is also consistent with the very wide definition of 'pleasure boat' in the 1971 Act.

The wider construction is also consistent with section 5(1) of the 1971 Act which includes the term 'keep' and 'let for hire'. If Mr Moore's construction were correct, a pleasure boat certificate would only be required if a vessel were 'kept' or 'let for hire' in the thoroughfare of the river in question. It seems to me that it is not consistent with the purpose of the 1971 Act set out in the Preamble. Furthermore, it seems to me that

it is not normal to assume that a pleasure boat will be 'kept' in such a thoroughfare at all." *Ravenscroft v Canal And River Trust* [2017] EWHC 1874 (Ch).

MAINTAIN. "I accept Mr Coppel's submission that the Commission does not 'maintain' the Register by allowing non-compliant entries to remain on it. The maintenance of a register involves a continual process of securing that both new entries onto it and existing entries satisfy the requirements for being on the Register. The Commission maintains the Register by ensuring that each entry meets current, rather than historic, requirements." *English Democrats Party, R (On the application of) v Electoral Commission* [2018] EWHC 251 (Admin).

MAINTENANCE. "In these circumstances, it seems to me that the appeal boils down to an argument as to whether it can properly be regarded either as 'maintenance' or as 'reasonable financial provision' under sections 1(1) and 1(2)(b) of the 1975 Act for an order to be made requiring the estate of the deceased to transfer the property to the applicant at full value. Mr Weatherill submitted that providing for Mr Warner to pay full value was not properly to be regarded as reasonable financial provision for maintenance.... If it is indeed maintenance to provide a house for an applicant in Mr Warner's position, why should the exact amount of the purchase price matter?" *Lewis v Warner* [2017] EWCA Civ 2182.

MANIFESTLY WITHOUT REASONABLE FOUNDATION. "The expression 'manifestly without reasonable foundation' derives from decisions in *Strasbourg* where the European Court of Human Rights ('ECtHR') has considered that a wide margin of appreciation should be allowed to member states when it comes to general measures of political, economic or social strategy. In such an area the ECtHR has stated it will respect the member state's policy unless it is manifestly without reasonable foundation—as seen for example in respect of welfare benefits in Stec supra at [52]: 'A wide margin is usually allowed to the state under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the court will generally respect the legislature's policy choice unless it is "manifestly" without reasonable foundation.'" *Hunter v Student Awards Agency for Scotland* [2016] ScotCS CSOH 71.

MARRIAGE OF CONVENIENCE. See SHAM MARRIAGE.

MARSHALLING. "The principle of marshalling is an equitable principle. In its classic form it applies where two creditors are owed debts by the same debtor, one of whom can enforce his claim against more than one security but the other can resort to only one. In those circumstances the principle gives the second creditor a right in equity to require that the first creditor be treated as having satisfied himself as far as possible out of the security to which the latter has no claim." *McLean v Trustees of the Bankruptcy Estate of Dent* [2016] EWHC 2650 (Ch).

MASTERS. "Masters of the Queen's Bench Division are thus properly described nowadays as being 'judges attached to the Senior Courts, Queen's Bench Division' [10]. This echoes the notion of 'attachment' of the puisne judges who sit in the Queen's Bench Division but does not equate Masters with those judges: see SCA 1981 s.5.... For an exposition of the role of the modern Master, the wide scope of their trial jurisdiction[11] and the relationship of equality between judgments of puisne judges and Masters at first instance, see the decision of Chief Master Marsh in *Coral Reef Ltd v Silverbond Enterprises Ltd* [2016] EWHC 874 (Ch). Coral Reef was applied by me

in *Paxton Jones v Chichester Harbour Conservancy* [2017] EWHC 2270 (QB) (and has been applied in other cases). See also *Kennedy v The National Trust for Scotland* [2017] EWHC 3368 (QB) per Sir David Eady." *Abdule v The Foreign And Commonwealth Office* (national security – jurisdiction and status) [2018] EWHC 692 (QB).

MATRIMONIAL PROPERTY. "In this judgment, I use the words matrimonial and marital interchangeably. In *White v White* [2001] AC 596, Lord Nicholls used the expression, 'from a source wholly external to the marriage' (p. 994) when referring to non-matrimonial property. He defined matrimonial property in *Miller v Miller*; *McFarlane v McFarlane* [2006] 1 FLR 1186 (paragraph 22) as 'the financial product of the parties' common endeavour'. Lady Hale used the expression 'the fruits of the matrimonial partnership' in *Miller* (paragraph 141). In *Charman v Charman* (No 4) [2007] 1 FLR 1246 matrimonial property was described as 'the property of the parties generated during the marriage otherwise than by external donation' (paragraph 66). Non-matrimonial property can, therefore, be broadly defined in the negative, namely as being assets (or that part of the value of an asset) which are not the financial product of or generated by the parties' endeavours during the marriage. Examples usually given are assets owned by one spouse before the marriage and assets which have been inherited or otherwise given to a spouse from, typically, a relative of theirs during the marriage.... It is, perhaps, worth reflecting that the concept of property being either matrimonial or non-matrimonial property is a legal construct. Moreover, it is a construct which is not always capable of clear identification. An asset can, of course, be entirely the former, as in many cases, or entirely the latter, as in *K v L*. However, it is also worth repeating that an asset can be comprise both, in the sense that it can be partly the product, or reflective, of marital endeavour and partly the product, or reflective, of a source external to the marriage. I have added the word 'reflective' because 'reflect' was used by Lord Nicholls in *Miller* (paragraph 73) and 'reflective' was used by Wilson LJ in Jones (paragraph 33). When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science." *Hart v Hart* [2017] EWCA Civ 1306.

MEETING. Stat. Def. ("including virtual meeting"), Housing Administration (England and Wales) Rules 2018 rule 1.3.

MEMBER OF STAFF. Stat. Def., Data Protection (Charges and Information) Regulations 2018 reg.1.

MINISTER (PARISH). Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

MINISTER OF THE CROWN. Stat. Def., Data Protection Act 2018 s.205.

Stat. Def., "has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for Her Majesty's Revenue and Customs" (European Union (Withdrawal) Act 2018, s.20(1)).

MINOR. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

MISSING. Stat. Def. (in context of missing persons), Guardianship (Missing Persons) Act 2017 s.1.

MISSION MANAGEMENT FACILITY. Stat. Def., Space Industry Act 2018 s.19.

MOBILE REPEATER DEVICE. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

MODIFICATION. Stat. Def. ("modification" includes omission, addition or alteration), Smart Meters Act 2018 s.10.

MODIFY. Stat. Def., "includes amend, repeal or revoke (and related expressions are to be read accordingly)" (European Union (Withdrawal) Act 2018, s.20(1)); and note that, interestingly, "amend" is not defined so as to include "modify".

MOTOR VEHICLE. Stat. Def. ("a mechanically propelled vehicle intended or adapted for use on roads"), Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

N

NATIONAL AMENITY SOCIETY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

NAVIGABLE. See MAIN NAVIGABLE CHANNEL.

NE BIS IN IDEM. "A precise formulation of the actual ambit of the principle of ne bis in idem is elusive. Its general import is, however, clear enough. It is a reflection of the well understood rule against double jeopardy; and, in the context of its application to Member States under Article 54 of the Convention implementing the Schengen Agreement, is also a reflection of the prohibition of measures which might prejudice the hallowed principle of freedom of movement." *A v Director of Public Prosecution* [2016] EWCA Crim 1393.

NECESSARY. "I agree with Mr Cragg that the approach adopted to 'necessary' in the statutory context with which Lord Griffiths was concerned is equally applicable to 'necessary' as found in Regulation 12 of the Complaints and Misconduct Regulations. It has a high threshold, in the sense that it means more than 'useful' or 'expedient'." *Miah, R. (on the application of) v Independent Police Complaints Commission* [2016] EWHC 3310 (Admin).

"However, it should be emphasised that the underlying concept in section 24(5) is that of necessity. This cannot be envisaged as a synonym for 'desirable' or 'convenient'. For present purposes the issue may be formulated thus: should this Court, in the exercise of its review function, conclude that an arrest was necessary to allow the prompt and effective investigation of this complaint?" *R. (on the application of TL) v Surrey Police* [2017] EWHC 129 (Admin).

NET HEAT INPUT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

NET SALES INCOME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

NETWORK AND INFORMATION SERVICE. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

NHS CHEMIST. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

NIGHT WORK. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

NITROGEN OXIDES. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

NON-GB COMPANY. Stat. Def. ("a company incorporated outside Great Britain", Smart Meters Act 2018 s.10.

NON-PROPRIETARY NAME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

NON-TRIVIAL. "I am not troubled by the use of the words 'non-trivial' in paragraph 12(1)(f) because it is clear that the meaning of 'non-trivial' is not confined to that which is only just not trivial. As I said in argument, it can also mean

'significant', which is the meaning to be preferred because it chimes with the meaning of 'misconduct' in the Accountancy Scheme. Accordingly I reject Mr Drabble's submission that paragraph 12(1)(f) is to be given a meaning of anything but trivial, i.e. as including the not quite trivial. Such a meaning would be out of context and therefore inconsistent with the principles of interpretation which courts apply. The word 'non-trivial' must be given a contextual meaning consistent with the term 'misconduct' which sub-paragraph (f) explicates." *Baker Tilly UK Audit LLP v Financial Reporting Council* [2017] EWCA Civ 406.

NORTHERN IRELAND DEVOLVED AUTHORITY. Stat. Def., "the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department" (European Union (Withdrawal) Act 2018, s.20(1)).

NOTHING ELSE WILL DO. "Since the phrase 'nothing else will do' was first coined in the context of public law orders for the protection of children by the Supreme Court in *Re B*, judges in both the High Court and Court of Appeal have cautioned professionals and courts to ensure that the phrase is applied so that it is tied to the welfare of the child as described by Baroness Hale in paragraph 215 of her judgment:

'We all agree that an order compulsorily severing the ties between a child and her parents can only be made if "justified by an overriding requirement pertaining to the child's best interests". In other words, the test is one of necessity. Nothing else will do.'

The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase 'nothing else will do' is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s.1). The phrase 'nothing else will do' is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all of the relevant pros and cons (see *Re B-S* [2013] EWCA Civ 1146, *Re R* [2014] EWCA Civ 715 and other cases).

69. Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase 'nothing else will do' can properly be deployed. If the ultimate outcome of the case is to favour placement for adoption or the making of an adoption order it is that outcome that falls to be evaluated against the yardstick of necessity, proportionality and 'nothing else will do'." *W (A Child), Re* [2016] EWCA Civ 793.

NOTICE. "For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words 'serve' and 'on', constitute 'service' on 'the owner' 'by the authority'." *UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430.

O

OCCUPATION. See ACTUAL OCCUPATION.

OFF THE RECORD. "'Off the record' is an idiom and like many idioms can bear different shades of meaning. It may, for example, be intended to mean 'strictly confidential' or it may be intended to mean 'not to be directly quoted or attributed'. The judge found that Mr Hartnett understood it to mean that the interview was to be a 'background briefing', intended to influence the journalists' views and what they wrote about matters affecting HMRC but not to be published. There has been no appeal against that finding, but nothing in my view turns on what precisely Mr Hartnett intended." *Ingenious Media Holdings Plc & R. (on the application of) v Revenue and Customs* [2016] UKSC 54.

OFFAL. Stat. Def. (by reference to point 1.11 of Annex 1 to Regulation (EC) No. 853/2004), Transmissible Spongiform Encephalopathies (England) Regulations 2018 reg.2.

OFFICIAL. Stat. Def., Public Regulated Service (Galileo) Regulations 2018 reg.2.

ON-CALL. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

ONLINE MARKETPLACE. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

ONLINE SEARCH ENGINE. Stat. Def. ("a digital service that allows users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links in which information related to the requested content can be found"), Network and Information Systems Regulations 2018 reg.1.

OPERATES. "'Operate', for the purposes of section 55, has been considered by this court in a series of cases, including *Britain v ABC Cabs* [1981] RTR 395, *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87, *Adur District Council v Fry* [1997] RTR 257 and *Bromsgrove District Council v Powers* (Unreported) (16 July 1998). These firmly establish that, in this context, 'operate' does not have its common meaning. Rather, it is a term of art defined strictly by section 80(1) as meaning 'in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle'. Therefore, as Dyson J said in *Powers*: '... [T]he definition of the word "operate" focuses on the arrangements pursuant to which a private hire vehicle is provided and not the provision of the vehicle itself.... [T]he word "operate" is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements.'" *Milton Keynes Council v Skyline Taxis and Private Hire Ltd* [2017] EWHC 2794 (Admin).

OPERATIONAL. "I am satisfied that, on an ordinary construction of the contract, by engaging to supply a 'fully operational cofferdam' the pursuer did not undertake that it could be used in all weather conditions however severe. The defender's suggested construction is not the natural and ordinary meaning of the words used. In my opinion it also defies common sense. It was obvious that construction work at sea

would be likely to be unsafe in some severe weather conditions." *Acotec UK Ltd v McLaughlin & Harvey Ltd* [2016] ScotCS CSOH 134.

OPPRESSIVE. "The meaning of the words 'unjust' and 'oppressive' were considered by Lord Diplock in relation to the very similar provision in s.8(3) of the Fugitive Offenders Act 1967 in *Kakis* at 782: "'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into account; but there is room for overlapping and between them they would cover all cases where to return him would not be fair." *Pillar-Neumann v Public Prosecutor's Office of Klagenfurt* [2017] EWHC 3371 (Admin).

ORDINARY RESIDENCE. The Home Office issued Nationality policy: assessing ordinary residence Version 2.0 on 25 October 2017 telling caseworkers and examiners how to consider whether an individual is ordinarily resident in the UK — see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655489/Nationality-policy-assessing-ordinary-residence-v2.0EXT.pdf.

"Guidance on the meaning of 'ordinarily resident' can be found in three decisions of the House of Lords: *Levene v Inland Revenue Commissioners* [1928] AC 217, *Inland Revenue Commissioners v Lysaght* [1928] AC 234 and *R (Shah) v Barnet LBC* [1983] 2 AC 309. Those cases provide authority for the following propositions:

i) 'The expression "ordinary residence" connotes residence in a place with some degree of continuity and apart from accidental or temporary absences' (*Levene*, at 225, per Viscount Cave LC);

ii) '[T]he converse to "ordinarily" is "extraordinarily" and … part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not "extraordinary" (*Lysaght*, at 243, per Viscount Sumner). Consistently with this, "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration' (*Shah*, at 343, per Lord Scarman);

iii) 'Ordinary residence' differs little from 'residence' (*Levene*, at 222, per Viscount Cave LC). 'Ordinarily resident' means 'no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life' (*Lysaght*, at 248, per Lord Buckmaster);

iv) A person can be resident in a place even though 'from time to time he leaves it for the purpose of business or pleasure' and, conversely, 'a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here' (*Levene*, at 222-223, per Viscount Cave LC);

v) A person can also be resident in a place even though he would prefer to be elsewhere. In *Lysaght*, Lord Buckmaster said (at 248):

'A man might well be compelled to reside here completely against his will; the exigencies of business often forbid the choice of residence, and though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, as in my opinion they were in this case, it is open to the Commissioners to find that in fact he does so reside';

vi) A person may reside in more than one place (*Levene*, at 223, per Viscount Cave LC);

vii) 'Ordinary residence' is not synonymous with 'domicile' or 'permanent home' (*Shah*, at 342-343 and 345, per Lord Scarman);

viii) 'Immigration status' "'may or may not be a guide to a person's intention in establishing a residence in this country' (*Shah*, 348, per Lord Scarman); and

ix) 'There are two, and no more than two, respects in which the mind of the "propositus" is important in determining ordinary residence': '[t]he residence must be voluntarily adopted' and 'there must be a degree of settled purpose', which could potentially be 'a specific limited purpose' (*Shah*, at 344 and 348, per Lord Scarman). Lord Scarman explained in *Shah* (at 344):

"The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled." *Arthur v Revenue And Customs* [2017] EWCA Civ 1756.

"The heart of the issue in this aspect of the case is whether occupation of a hotel by BU and her children would be occupation 'as their only or main residence'. Mr Carter submits that the phrase 'as their only or main residence', which is not defined in the Immigration Act, should be construed consistently with the same or similar phrases used in the Leasehold Reform Act 1967, Rent Act 1977 and Housing Act 1988. In *Crawley Borough Council v Sawyer* (1988) HLR 98, the Court of Appeal said there was no material difference between occupying premises as a home and occupying them as a residence. Occupation as a home or residence requires 'a substantial degree of personal occupation by the tenant of an essentially residential nature': *Herbert v Byrne* [1964] 1 WLR 519 at 528. In a similar vein, in *Swanbrae Ltd v Elliott* (1986) 19 HLR 86 Swinton Thomas J said that 'residing with' means more than 'living at' and 'mean something more than dwell transiently and to my mind they have the connotation of having a settled home'. The question is one of fact and degree. In *Freeman v Islington LBC* [2010) HLR 6 at Jacobs LJ said at [22]: 'mere "temporary residence" is not enough. One is looking for something which can fairly be called "homemaking".'"

Mr Carter submits that staying in a hotel, as a temporary expedient to avoid homelessness, would not amount to occupation of premises for residential use.

I accept that occupation of hotel accommodation may not be residential but whether it is in any particular case will be dependent on all the circumstances. Relevant considerations may include the intention of the occupier, the length of occupation, the actual living arrangements and what alternatives there are.

In understanding what is meant by the statutory terms, I may properly have regard to the Explanatory Notes to the Act: see *Wilson v First County Trust (No.2)* [2003] [UKHL] 40; [2004] 1 AC 816 at [64]; *Hillingdon LBC v Secretary of State for Transport* [2017] EWHC 121 (Admin). Paragraph 108 of the Explanatory Notes to the Immigration Act explain that 'for example, holiday accommodation will not ordinarily be captured, as for most people it will not provide their only or main home, but if somebody chooses to live in a hotel, the arrangements for that person will be

captured.' This illustrates the fact-sensitive judgment that must be made in each case and that short term accommodation which is not generally provided as a home could be caught. If occupation of holiday accommodation can be for residential use, so can occupation of a hotel. It all depends on the circumstances. The Explanatory Note provides reassurance that my construction of the provisions is consistent with the legislative intention." *U and U, R (on the application of) v Milton Keynes Council* [2017] EWHC 3050 (Admin).

ORIGINAL BIOMETHANE. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

OTHERWISE. "The word otherwise is defined in the Oxford English dictionary as 'in circumstances different from those present or considered'. The words or otherwise therefore distinguish the circumstances in question from the categories that precede them. The words have a specific purpose, leaving open the possibility of other sets of circumstances or conditions that could feature as the background to the central operative requirement that the individual's ability to protect him or herself from violence, abuse or neglect is significantly impaired. They provide for an additional third category or categories of potentially vulnerable adults who are not suffering from an illness, disability or old age. The linkage between the categories specified and the alternative category is that the adult's ability to protect himself must be impaired.

We reject the submission that the words or otherwise should be construed ejusdem generis so that or otherwise becomes a reason similar to those listed. Section 5(6) does not justify such an interpretation. It does not for instance say 'some other similar reason' or 'some like reason' or 'some equivalent reason' or 'a reason of a similar type'. If Parliament had wished to link 'other reason' to the identified categories, then it could easily have chosen any of these drafting techniques. It did not do so." *Uddin, R v* [2017] EWCA 1072 (Crim).

OUTPUT WORK. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

OUTSTANDING. "Outstanding is an ordinary English word with a readily understood meaning and was doubtless chosen by Parliament to identify the exceptional nature of the benefit that must exist. It may be useful for this purpose to consider whether the benefit to the employer exceeded what would normally be expected to result from the work for which the employee was paid so long as one bears in mind that the focus of s.40(1) is on the benefit to the employer and not on the degree of inventiveness of the employee.... What I think this demonstrates is that 'outstanding' is a relative concept which requires to be measured against the relevant factors in each case. In relation to a large conglomerate like the Unilever Group, turnover and profitability will be relevant factors to consider as in every other case but they will not be the only relevant factors as s.40(1) makes clear." *Shanks v Unilever Plc* [2017] EWCA Civ 2.

OVERTIME. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

P

PACKAGE TRAVEL CONTRACT. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

PACKETS. "By the priority date mobile networks were digital. At least some types of information sent via the networks were in 'packets'—that is groups of bits. In general a packet may comprise payload data (that is content which the transmitting entity is to send to a receiving entity) and control data (that is data which enables the transmitting entity, receiving entity and mobile network to operate efficiently and process the packets). The control data is usually included in a packet as a header." *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWCA Civ 266.

PARISH. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

PAROCHIAL LIBRARY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.95.

PARTNERSHIP. "In its legal meaning partnership is 'the relation which subsists between persons carrying on a business in common with a view to profit': see section 1(1) of the Partnership Act 1890. Other general characteristics of a partnership are: (i) mutual agency whereby each partner has authority to represent and bind the other(s), and (ii) joint liability for the debts and obligations of the partnership business." *Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan v Kent (aka John Kent)* [2018] EWHC 333 (Comm).

PATENT PROTECTION PERIOD. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

PERSISTENTLY. "The meaning of the word 'persistently', as used in paragraph 3.1 of Practice Direction 3C, was considered by Mr Edward Bartley Jones QC, sitting as a Deputy High Court Judge, in *Courtman v Ludlam* [2009] EWHC 2067 (Ch). He concluded that 'persistence' requires at least three wholly unmeritorious applications.... It seems to me, however, that Mr Bartley Jones was right to take the view that an ECRO cannot be made unless there have, overall, been at least three totally without merit claims or applications. Had it been intended that an ECRO should be possible where there had been no more than two unmeritorious claims or applications, provided that they had been spread across more than one set of proceedings, the draftsman could have said so in terms. The Practice Direction is not so framed, but instead uses the word 'persistently'. Mr Boardman is in effect submitting that a person can be said to have issued claims or applications 'persistently' if he has made just one application in each of two sets of proceedings. In my view, however, such a person would not naturally be described as issuing claims or applications 'persistently', and the point is reinforced by the contrast with the '2 or more' found in paragraph 2.1 of the Practice Direction." *CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] EWHC 1594 (Ch).

PERSON. "Ms Hewitt sought to resist that clear conclusion. She submitted that the Coroner is not a 'person' for the purposes of Regulation 18(1) of the 1996 Regulations. I do not accept that submission. In my view, the natural meaning of the word 'person' includes the Coroner. In an appropriate context, that word can include a judge or other judicial office holder. For example, in the context of divorce proceedings, it was held that the words 'any person', in section 10 of the Matrimonial Causes Act 1950, 'clearly include the trial judge': see *Middlebrook v Middlebrook* [1964] P 262, at 264 (Wrangham J). I see no reason to take a different view in the case of a coroner." *Secretary of State, R. (on the application of) v HM Senior Coroner for Norfolk* [2016] EWHC 2279 (Admin).

"By s.5 and Schedule 1 of the Interpretation Act 1978, 'person' includes 'a body of persons corporate or unincorporated', and so a local authority." *R. v AB* [2017] EWCA Crim 534.

PERSONAL DATA. Stat. Def., Data Protection Act 2018 s.3.

PERSONAL DATA BREACH. Stat. Def., Data Protection Act 2018 ss.33, 84.

PET. Stat. Def. ("an animal mainly or permanently, or intended to be mainly or permanently, kept by a person for— (a) personal interest, (b) companionship, (c) ornamental purposes, or (d) any combination of (a) to (c)"), Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

PLATFORM TICKET. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

PLATINUM SALT SENSITISATION. "Platinum salt sensitisation is, in itself, an asymptomatic condition. However, further exposure to chlorinated platinum salts is likely to cause someone with platinum salt sensitisation to develop an allergic reaction involving physical symptoms such as running eyes or nose, skin irritation, and bronchial problems." *Dryden v Johnson Matthey PLC* [2018] UKSC 18.

POINT OF SALE. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

POINTE GOURDE RULE. "The appeal raises questions concerning the so-called Pointe Gourde rule (*Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565), or 'no-scheme' rule: that is, the rule that compensation for compulsory acquisition is to be assessed disregarding any increase or decrease in value solely attributable to the underlying scheme of the acquiring authority. The law is to be found in the Land Compensation Act 1961 as explained and expanded by judicial interpretation. The particular issue concerns the relationship between the general provisions for the disregard of the scheme, and the more specific provisions relating to planning assumptions. 9. The rule has given rise to substantial controversy and difficulty in practice. In *Waters v Welsh Development Agency* [2004] 1 WLR 1304; [2004] UKHL 19, para 2 ('*Waters*'), Lord Nicholls of Birkenhead spoke of the law as 'fraught with complexity and obscurity'. In a report in 2003 the Law Commission conducted a detailed review of the history of the rule and the relevant jurisprudence, and made recommendations for the replacement of the existing rules by a comprehensive statutory code (Towards a Compulsory Purchase Code (1) Compensation Law Com No 286 (Cm 6071)). Since that report aspects of the rule have been subject to authoritative exposition by the House of Lords in Waters itself, and more recently in *Transport for London v Spirerose Ltd* [2009] 1 WLR 1797; [2009] UKHL 44 ('*Spirerose*'). 10. Although the Law Commission's recommendations for a complete new code were not adopted by government, limited amendments to the 1961

Act in line with their recommendations were made by the Localism Act 2011 section 232 (relating to planning assumptions). Further proposed amendments, dealing with the no-scheme principle more generally, are currently before Parliament in the Neighbourhood Planning Bill 2016–17. The purpose of the latter is said to be that of 'clarify[ing] the principles and assumptions for the "no-scheme world", taking into account the case law and judicial comment' (Explanatory Notes para 70). The present appeal falls to be decided by reference to the 1961 Act as it stood before the 2011 amendments. 11. Section 5 rule 2 established the general principle that the value of land is taken to be 'the amount which the land if sold in the open market by a willing seller might be expected to realise'. In applying this general principle, it is necessary for present purposes to take account of two other groups of provisions, relating first to 'disregards' of actual or prospective development (section 6 and Schedule 1), and secondly to 'planning assumptions' (sections 14–16).... It is in any event well-established that the application of the Pointe Gourde rule itself may result in changes to the assumed planning status of the subject land. Thus in *Melwood Units Pty Ltd v Main Roads Comr* [1979] AC 426, where land was acquired for an expressway, the Privy Council accepted that compensation should reflect the fact that but for the expressway project permission would have been obtained to develop the whole area for a drive-in shopping centre (p 433). That case, although decided under a different statutory code, has long been accepted as authoritative in this jurisdiction. It was cited without criticism in *Spirerose* (see paras 110ff per Lord Collins). Nor is there anything in section 6 to indicate that a more restrictive approach should be applied under the statutory disregards. In saying that the two stages should not be 'elided' (para 19 above), the tribunal as I understand them were doing no more than emphasising the difference between the statutory tests. 40. It has also long been accepted that application of the general law may produce a more favourable result for the claimant than the statutory planning assumptions. A striking illustration noted by the Law Commission (loc cit p 206–7) is provided by the two *Jelson* cases, relating to the same strip of land acquired for a road: *Jelson Ltd v Minister of Housing and Local Government* [1970] 1 QB 243, *Jelson Ltd v Blaby District Council* [1977] 1 WLR 1020. The refusal in the first case of a section 17 certificate for residential development, was held in the second not to prevent the tribunal taking account of the prospect of residential development under the Pointe Gourde rule (or section 9 of the 1961 Act). The difference lay in the criteria to be applied. Under section 17 attention was directed at the position as at the date of the deemed notice to treat, by which time development on either side of the strip had made further development impossible. Under the Pointe Gourde rule it was possible to look at the matter more broadly. Again this decision was cited without criticism in *Spirerose* (paras 105ff per Lord Collins).... The Upper Tribunal's decision in the present case is a powerful illustration of the potential complexities generated by the 1961 Act in its unamended form. It is to be hoped that the amendments currently before Parliament will be approved, and that taken with the 2011 amendments they will have their desired effect of simplifying the exercise for the future." *Homes and Communities Agency v JS Bloor (Wilmslow) Ltd* [2017] UKSC 12.

POPPY STRAW. "This is an appeal by way of case stated. It raises and turns on the meaning and application of the definition of poppy straw in the Misuse of Drugs Act 1971 (the 1971 Act). The question is whether that definition covers the poppy head and poppy heads and stalks imported by the Appellant for use in flower arrangements.

... The relevant definition of 'poppy straw' in the 1971 Act is 'all parts, except the seeds, of the opium poppy after mowing'....

In my view, the Crown Court reached the wrong conclusion on the meaning of the statutory definition for the reasons set out above. In summary, they are:

i) as a matter of language, the inclusion of the concept of mowing into the definition limits the width or extent of what is poppy straw,

ii) as a matter of language, if the wide approach taken by the Crown Court is right there would be no need for any reference to mowing or any other means of removal from the land because before any issue of exportation and importation arise the poppies must have been separated from the land,

iii) as a matter of the ordinary use of language, whole poppy heads (with and without stalks) have not been mown,

iv) it is easy to see that the poppy heads (with and without heads) in issue were harvested with care and, as matter of the ordinary use of language, were not mown,

v) the wide approach taken by the Crown Court to the interpretation of the word or concept of mowing is not supported by the purpose or effect of the 1961 Single Convention, and

vi) the wide approach taken by the Crown Court to the interpretation of the word or concept of mowing is not required to fulfil the underlying purposes of the UK licensing regime that applies to poppy straw or to avoid any lack of clarity, confusion or difficulties in its implementation.

I do not place weight on the ordinary meaning of 'straw' because 'poppy straw' is defined in the 1971 Act. However, I note that the ordinary use of that word links to the view that the 1961 Single Convention was addressing what had been regarded as an agricultural waste product." *Marwaha v UK Border Revenue Agency (Cash And Compensation Team)* [2017] EWHC 2321 (Admin).

PORNOGRAPHIC MATERIAL. Stat. Def., Digital Economy Act 2017 s.15. For "extreme pornographic material" see Digital Economy Act 2017 s.22. See PORNOGRAPHY.

POSSESSION. Stat. Def., "possession means exclusive occupation." Neighbourhood Planning Act 2017 s.30.

POSTED. "It is also accepted that 'posted' has a similar meaning as 'published' in a defamation action." *JR20 v Facebook Ireland Ltd* [2017] NICA 48.

PREFERENCE. "Although section 166A was only recently added, the statutory expression 'reasonable preference' in this context is not a new one. It is agreed between counsel and appears to be well established that the word 'preference' must be read and understood in the sense of priority. There is now a considerable and still-growing body of authority in this field. An early case was *R. v Wolverhampton MBC ex parte Watters* (1997) 29 HLR 931. There, the claimant was in a category of person who was entitled to reasonable preference under the legislation then in force, but she had significant rent arrears which had the effect under the housing authority's policy that she would not be admitted to their housing waiting list. It was argued on that claimant's behalf that '... because Parliament have ordained that reasonable preference is to be given, a council cannot treat it as reasonable not to grant any preference. Otherwise [the then-relevant section] would be otiose.' (See in the judgment of Leggatt LJ at page 935.)" *Woolfe, R. (on the application of) v London Borough of Islington* [2016] EWHC 1907 (Admin).

PREMISES. Stat. Def. ("includes any place, plant, machinery, equipment, apparatus, vehicle, vessel, aircraft, hovercraft, tent, temporary or movable building or structure"), Control of Trade in Endangered Species Regulations 2018 reg.2.

PRESCRIPTION ONLY MEDICINE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

PRIMARY LEGISLATION. Stat. Def., "means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation" (European Union (Withdrawal) Act 2018, s.20(1)).

PRIMARY MEDICAL SERVICES PROVIDER. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

PROCEEDINGS. "Giving the lead majority judgment, Rix LJ undertook a close analysis of earlier authorities on the meaning of 'proceedings': *Masson Templier & Co v De Fries* [1910] 1 KB 535 and *Wright v Bennett* [1948] 1 KB 601. He observed at [42] that 'Although it would be perfectly natural to think of an appeal as arising from and being part of the same proceedings as the trial from which the appeal is taken, it is nevertheless clear that trial and appeal have been treated as separate proceedings for the purposes of costs'. He referred also to provisions of the CPR, including 47.1 and 47.2, as showing that this distinction 'is still recognised and written into current rules'. Whether or not the distinction applied in the case of section 29 depended on its purpose and context. Rix LJ, and Etherton LJ, concluded that it did apply to section 29. At [58], Rix LJ referred to 'a well-known distinction, made in the context of costs liability, between costs of trial and appeal where trial and appeal are spoken of as different proceedings' and said that 'the word 'proceedings' in section 29 should be given its traditional meaning which distinguishes between proceedings at trial and on appeal". Etherton LJ also referred at [62] to CPR 47.1 and 47.2 as making the distinction between first instance and appeal proceedings." *Khaira v Shergill* [2017] EWCA Civ 1687.

PROCESS. "In my view, there is nothing in the word 'process' itself which implies a transition or change. The cases under the Capital Allowances Act 1968 were no doubt coloured by the context, related to 'industrial' buildings, and the need for goods to be 'subjected' to a process. This is apparent in particular from the opinion of Lord Guthrie in the *Kilmarnock* case (42 TC 675, 681, 1966 SLT 224, 228). He recognised 'process' as a word with 'various meanings some wider than others', including 'the widest significance of "anything done to the goods or materials"'; but in conjunction with the word 'subjection' a narrower reading was appropriate. I agree respectfully with that view of the wider meaning of the word 'process', which is also consistent with the standard dictionary definitions. A 'trade process' is simply a process (in that wide sense) carried on for the purposes of a trade. 40. Mr Kolinsky submits that, in the context of Iceland's trade, the word is apt to cover 'the continuous freezing or refrigeration of goods to preserve them in an artificial condition'. I agree. Since the services provided by the relevant plant have been held to be used 'mainly or exclusively' as part of that trade process, they should be left out of account for rating purposes." *Iceland Foods Ltd v Berry (Valuation Officer)* [2018] UKSC 15.

PROCESSING (DATA). Stat. Def., Data Protection Act 2018 s.3.

PROCESSOR (DATA). Stat. Def., Data Protection Act 2018 s.3.

PRODUCT. Stat. Def., Public Regulated Service (Galileo) Regulations 2018 reg.2.

PROFESSIONAL STANDARDS. Stat. Def., Children and Social Work Act 2017 s.63.

PROFILING. Stat. Def., Data Protection Act 2018 s.33.

PROPERTY. "15. As to what constitutes 'property', this is always 'heavily dependent on context…—something can be "proprietary" in one sense while also being non-proprietary in another sense': M Conaglen, 'Thinking about proprietary remedies for breach of confidence' (2008) *Intellectual Property Quarterly* 82, 89, referring to R Nolan, *Equitable Property* (2006) 122 LQR 232, 256–257. As the Chancellor noted (para 62), there is a school of thought (which can be dated to FW Maitland, *Equity—a Course of Lectures* (1936)) which analyses the equitable interests created by a common law trust not as proprietary, but as personal or 'obligational', even as against third parties. The issue 'whether trusts are properly seen as part of the law of property or as an aspect of the law of obligations' is described by Swadling in Burrows, *English Private Law* (3rd ed) (2013) para 4.140 as a 'difficult question'; see also Burrows, *The Law of Restitution*, (3rd ed) (2011), pp 191–193, Nolan, *Equitable Property* (2006) 122 LQR 232. Supporters of a personal analysis include B McFarlane, *The Structure of Property Law* (2008); see also Watt, *The Proprietary Effect of a Chattel Lease* (2003) Conveyancer and Property Lawyer 61. A recent discussion of the pros and cons of each analysis appears by P Jaffey in *Explaining the Trust* (2015) 131 LQR 377. Jaffey concludes that, although a trust involves personal rights against the trustee, only a proprietary analysis explains satisfactorily those aspects which concern the beneficiary's position vis-à-vis third parties, such as the trustee's creditors and recipients of unauthorised transfers of trust property." *Akers v Samba Financial Group* [2017] UKSC 6.

PROPOSES. "First, in the context of paragraph 26, 'proposes' and 'intends' are, in my judgment, synonyms. While paragraph 26(1) requires a person who proposes to make an appointment to give written notice to the persons there specified, paragraph 26(2) (as amended by the Deregulation Act 2015 with effect from 1 October 2015) refers to such person as '[a] person who gives notice of intention to appoint under sub-paragraph (1)'. The same form of words is used in paragraph 27(1), while the heading to paragraphs 26–28 is 'Notice of intention to appoint'. The judge dismissed these references as 'simply shorthand references to a paragraph 26 notice'. While true, that does not explain why the notice is repeatedly described as a notice of intention, if the word 'proposes' meant something different from 'intends'. In my view, the natural reading of these provisions is that a single meaning was intended. This is certainly how the framers of the relevant Insolvency Rules and prescribed forms understood the paragraphs. Second, I have difficulty in seeing that, either as a matter of ordinary language or in the context of paragraph 26, there is a significant difference in the meaning of a person proposing to do something and a person intending to do that thing." *JCAM Commercial Real Estate Property XV Ltd v Davis Haulage Ltd* [2017] EWCA Civ 267.

PROPRIETARY. See PROPERTY.

PUBLIC. Stat. Def. (includes 'any organisation or body representing or having an interest in the environment, health, business or consumers'), National Emission Ceilings Regulations 2018 reg.2.

PUBLIC AUTHORITY. Stat. Def., Data Protection Act 2018 s.7.

PUBLIC BODY. Stat. Def., Data Protection Act 2018 s.7.

PUBLIC SAFETY. Stat. Def., Space Industry Act 2018 s.2.

PUPPY. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

PYROLYSIS. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

Q

QUASH. "In my judgment these submissions on the construction of the statute are unsustainable. Mr Banner's argument on the meaning of 'quash' founders on the long accepted rule—acknowledged by Sir Clive Lewis ('all legal effect')—that the effect of an order to quash, certiorari in the old language, was to render the instrument in question as if it had never been. If only the confirmed CPO were quashed, leaving the made CPO, the latter would still have legal effects: appeal rights, and the Secretary of State's duty to hold a public inquiry (s.13A of the 1981 Act). Mr Banner was driven to submit that only the substantive legal effect of the CPO—that is, the land's acquisition—was the target of a quashing order under s.24. But as soon as such niceties arise, they are refuted by the plain riposte that if Parliament had intended such distinctions, it would have said so. Mr Harris' position fares no better. It is not possible to construe the term 'compulsory purchase order' as it appears in s.24(2) as referring only to the CPO after confirmation and publication. It bears the meaning (by cross-reference from s.7) given by s.2. Reading s.2(1) and (2) together demonstrates, conspicuously in my view, that the term is intended to refer compendiously to the CPO as made and confirmed. The fact that the CPO is only 'operative' after publication of its confirmation does not imply, in light of s.2, that the instrument in its earlier stages is not under the statute a CPO at all. As my Lord David Richards LJ pointed out in the course of argument, the attributes of authorisation and confirmation of the CPO are treated as different concepts in s.2(2). The CPO is, as it were throughout its incarnation, recognised as the source of authority for the land's acquisition notwithstanding that its authority does not bite until after publication. 20. In short, 'compulsory purchase order' means the instrument so called from first to last. If the legislature had intended to allow for relief going only to its confirmation, it would have so provided." *Grafton Group (UK) Plc v Secretary of State for Transport* [2016] EWCA Civ 561.

R

RANGE CONTROL LICENCE. Stat. Def., Space Industry Act 2018 s.7.

RANGE CONTROL SERVICES. Stat. Def., Space Industry Act 2018 s.6.

REAL PROSPECT OF SUCCESS. "The effect of these new sections is to bring in a time limit within which judicial review of administrative decisions may be brought before the court and provides that the petitioner must obtain the permission of the court to proceed. The court may only grant permission if it is satisfied that the petitioner has a sufficient interest in the subject matter and it has a real prospect of success. . . . I agree with Lady Wolffe that the language is clear. She referred to the observations of Lord Woolf in *Swain v Hillman* [2001] 1 All ER 91 (at 92) considering a similar test in the English Civil Procedure Rules. He said the words do not need amplification; they speak for themselves (paragraph 37 of *Ocheimhan*). There is a danger in my opinion in over analysing the clear words of a statute. Having considered the matter I do not think I can usefully add much to the debate by conducting my own review of authority. [16] My own conclusion is that the language of the test directs the court to the prospects of success rather than whether the case is stateable or arguable. That is important. Many things are arguable; the ingenuity of counsel knows no bounds. Focussing on arguability may inhibit the court in addressing the mischief that section 27B(2)(b) is designed to address; the prevention of unmeritorious claims proceeding (see Lady Wolffe in *Ocheimhan* at paragraph 32). In the immigration context, for example, the infelicitous use of a phrase or word in a decision letter or determination may give rise to an argument that there has been an error of law. But it may have no real prospect of success because it is clear from a reading of the offending word or words in context that there is no error. [17] The word 'real' simply means genuine rather than fanciful or speculative. It is not a high standard but the court must be satisfied that there is some prospects of success." *Fei (AP), Re Judicial Review* [2016] ScotCS CSOH 28.

"[9] As Lord Boyd said in CF (China) Petitioner (supra), it is important not to over-analyse the clear words of the statute. The words 'real prospect of success' mean what they say. However, they were introduced against the background of *EY v Secretary of State for Scotland* (supra) and were intended to replace the former 'manifestly without substance' test for first orders. They were designed to set a higher hurdle than that which was described in EY as 'low'. The new test is certainly intended to sift out unmeritorious cases, but it is not to be interpreted as creating an unsurmountable barrier which would prevent what might appear to be a weak case being fully argued in due course. Of course the test must eliminate the fanciful, but it is dropping the bar too low to say that every ground of review which is not fanciful passes the test. It is not enough that the petition is not 'manifestly devoid of merit', since that, in essence, reflects the 'manifestly without substance' test adopted in EY. The applicant has to demonstrate a real prospect, which is undoubtedly less than probable success, but the prospect must be real; it must have substance. Arguability or

statability, which might be seen as interchangeable terms, is not enough (SCCR c 12, para 53). The substance, or the lack of it, is something which the court has to determine as a preliminary issue; not after a full consideration of elaborate pleadings. It is important therefore that those seeking permission are able to plead their cases accurately and, crucially, succinctly both in relation to the facts and the propositions in law." *Wightman, MSP and Others, Reclaiming Motion by against the Advocate General* [2018] ScotCS CSIH 18.

REASONABLE EXCUSE. "The central question in this appeal is whether, at least in the particular circumstances of the case, self-induced intoxication could properly amount to a 'reasonable excuse' for failing to provide a specimen of breath for analysis, for the purposes of an alleged offence under section 7(6) of the Road Traffic Act 1988.... It is well established that a 'reasonable excuse' for the purposes of section 7(6) may include non-medical reasons (see, for example, *Smith v Hand* [1986] R.T.R. 265, where the defendant was told that he could wait for his solicitor before providing a sample; and *Chief Constable of Avon and Somerset Constabulary v Singh* [1988] R.T.R. 107, where the defendant, because of his lack of understanding of the English language, did not understand what was said to him as to the requirement to provide a specimen). What constitutes a 'reasonable excuse' will always be a question of fact to be decided by the court.... In the first place, as is common ground – and must be so in the light of the authorities to which I have referred – the scope of a 'reasonable excuse' for the purposes of section 7(6) will always be a question of fact for the court on the evidence before it. Subsection (6) does not prescribe the ambit of a 'reasonable excuse', nor does it preclude any particular form of excuse, including an excuse based on the evidence as to the person's physical or mental capacity at the relevant time, which may include evidence as to his intoxication at the time when he was required to provide a specimen of breath. It is also important to keep in mind, however, that there is a real difference between a true explanation for a person's failure to provide a specimen of breath when required to do so and a 'reasonable excuse' for that failure. An explanation may constitute an excuse, and that excuse may be a reasonable one. But that is not necessarily so. The fact that voluntary intoxication may sometimes, perhaps often, explain a person's inability to provide a specimen does not mean that that person will therefore have a 'reasonable excuse' for not doing so.

Secondly however, it is important to distinguish between, on the one hand, the concept of 'medical reasons' in section 7(3) and, on the other, the concept of a 'reasonable excuse' in section 7(6). The two concepts are not the same, nor should they be confused. The judgment required of a constable under section 7(3)(a) as to whether there are 'medical reasons' why a specimen of breath cannot be provided, or should not be required, is a different exercise from that involved in a court's exercise of judgment, on the evidence before it, as to whether the reason for the failure to provide a specimen of breath was such as to constitute, in the circumstances, a 'reasonable excuse'. As this court's decision in *DPP v Beech* illustrates quite vividly, albeit on facts not identical to those of the present case, where the court is concerned with the question of whether or not a defendant's excuse for not providing a specimen required of him is a 'reasonable excuse', it must recognize the object and purpose of the 1988 Act, and must gauge whether, in view of that object and purpose, the excuse put forward can properly be regarded as reasonable. That is necessarily an objective exercise for the court, to be conducted, as was held in *DPP v Beech*, in the light of the evidence as to the defendant's level of intoxication, and, as will usually be so, the fact

that his or her intoxication is self-induced. It might reasonably be thought unattractive, to say the least, that a defendant whose self-induced intoxication was so great as to prevent him from understanding the requirement to provide a specimen or, as in this case, to render him physically incapable of providing that specimen, could take advantage of a statutory defence not available to a defendant whose conduct had been objectively more 'reasonable' in that his level of intoxication when he drove a motor vehicle on the highway was not such as to render him incapable of providing a specimen of breath. This would seem an unlikely concept for Parliament to have embraced in enacting the defence of 'reasonable excuse' for a defendant's failure or refusal to provide the specimen required.

Thirdly, in my view, it is not an answer to that last proposition to point to the alternative procedure for the provision of a specimen of blood or urine in accordance with section 7(1)(a), (3), (4) and (5). That the police are given an alternative method of obtaining a relevant specimen, whether of blood or urine, does not of itself render reasonable a defendant's failure or refusal to provide a specimen of breath where such failure or refusal is based on, or sought to be justified by, his own self-induced intoxication. There is no logical connection between the two.

Fourthly, this analysis is, I believe, entirely congruent with that consistently applied in the cases concerning the concept of 'reasonable excuse' for the purposes of section 7(6), to some of which I have referred. And it is not incompatible with the approach adopted in the cases where this court or the Court of Appeal has had to consider the concept of 'medical reasons' for the purposes of section 7(3). In particular, in my view, it aligns perfectly well the decision of the Court of Appeal in *Young v DPP*. In that case the court was concerned with a different question, which was whether, for the purposes of section 7(3)(a), the defendant's intoxication was capable of amounting to a 'medical reason' justifying a decision that a specimen of blood should be required instead of a specimen of breath. That is, both in substance and in consequence, a different decision from that with which we are concerned here. Crucially, there is nothing in *Young v DPP* to disturb the conclusion that, on the particular facts of a case, a 'reasonable excuse' for the purposes of section 7(6) may not be available even if there are cogent 'medical reasons' under section 7(3) to justify adopting the alternative procedure for requiring a specimen of blood under section 7(3). . . . The district judge's error, as I see it, lay in the conclusion he reached having regard to the respondent's intoxication – that the respondent was, as he put it, 'simply too drunk to provide'. He appears to have directed himself, in the light of the Court of Appeal's decision in *R. v Lennard*, that because a 'reasonable excuse' must arise from 'a physical or mental inability to provide' the specimen required, it follows that 'a physical or mental inability to provide' must necessarily be regarded as an excuse that is 'reasonable'. That is not so. To qualify as a 'reasonable excuse', the proffered excuse must be, in the circumstances, inherently 'reasonable'. And, on the face of it at least, the evidence before the district judge, and in particular the evidence of the respondent's level of intoxication and the absence of any particular feature in the evidence that might have sustained a defence of "reasonable excuse", left it open to him to conclude that that defence was not available here – because in the circumstances the excuse was not a 'reasonable' one. . . . In the circumstances of this case, once the respondent had failed to provide a specimen of breath, it was open to the officers to take the view that an offence under section 7(6) had been committed and that he should be charged with that offence. They were entitled to abandon the procedure for obtaining a specimen of

breath when they did, and there was nothing in section 7, or elsewhere in the 1988 Act, to compel them to proceed to require a specimen of blood or urine. The notion that this was to leave the procedure provided for under section 7 incomplete is misconceived. The officers were not bound to continue with the alternative procedure provided for under section 7(1)(b) and (3). That they could have done this is not to say that they should. They were not under a duty to do so." *Director of Public Prosecutions v Camp* [2017] EWHC 3119 (Admin).

REASONABLE TIME. "The expression 'reasonable time' is one which takes its meaning from its context and requires to be qualified, in my view, by the words 'in the circumstances'." *MacKie, Re Judicial Review* [2016] ScotCS CSOH 125.

REBUILD. "First, the concept of 'conversion' is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1. Mr Campbell responded to this by saying that Class Q must be read as a whole (including therefore Q.1) and read as such it provides a comprehensive definition of 'convert'. This was made up of (i) the requirement in Q that the starting point be an 'agricultural building' and the end point be a 'dwelling'; and (ii) the requirement in paragraph [105] NPPG that the existing building be sufficiently load-bearing. The requirement in Q.1(i) that the works be no more than 'reasonably necessary for the building to function as a dwelling house' was inherent in the first condition, i.e. the definition of a dwelling. It was argued that provided these conditions were met there was no more that was needed to be assessed by a decision maker in order to come to the conclusion that the works amounted to a conversion. The difficulty with this argument is that, on a fair construction of the drafting logic of the Order, the requirement that development amount to a 'conversion' is drafted as a separate requirement from these other conditions. In particular (as set out in the second point below) the concept of conversion has inherent limits which delineate it from a rebuild. Second, a conversion is conceptually different to a 'rebuild' with (at the risk of being over simplistic) the latter starting where the former finishes. Mr Campbell, for the Claimant, accepted that there was, as the Inspector found, a logical distinction between a conversion and a rebuild. As such he acknowledged that since Class Q referred to the concept of a conversion then it necessarily excluded rebuilds. To overcome this Mr Campbell argued that a 'rebuild' was limited to the development that occurred following a demolition and that it therefore did not apply to the present case which did not involve total demolition. In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in 'agricultural building'. There will be numerous instances where the starting point (the 'agricultural building') might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild', which also encapsulates what the Inspector had in mind, might be 'fresh build' since rebuild seems to assume that the existing building is being 're' built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very

long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. I should add that the position of the Claimant was that the challenge was as to law; if the argument in law was lost (and the Inspector did not therefore misdirect herself) then it was not argued that the Inspector acted irrationally in coming to the conclusion that the works were a rebuild/fresh build, and not a conversion. Third, in relation to the argument that the conversion/ rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as inspectors, who are well able to understand what the term means in a planning context (see by analogy *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at paragraph [19(4)] in relation to policy guidance). The concept of 'conversion' must also be understood in its specific planning context. It is not a term that can be plucked without more directly from a dictionary. Indeed, Mr Campbell acknowledged the logic, in the planning context, of the distinction between a rebuild and a conversion." *Hibbitt v Secretary of State for Communities & Local Government* [2016] EWHC 2853 (Admin).

RECOGNISE. "The word 'recognise' in the consent order and standard 10(e) is highly ambiguous. The *Oxford English Dictionary* supplies the more usual idiomatic meaning of the verb as 'to acknowledge, consider, or accept (a person or thing) as or to be something'. However, it also supplies the more legalistic meaning, namely 'to accept the authority, validity, or legitimacy of; esp. to accept the claim or title of (a person or group of people) to be valid or true'. When a lawyer talks about someone 'recognising' a foreign judgment he means accepting that judgment as valid, binding and enforceable against that person. This is certainly the sense in which recognition of foreign judgments is used at common law. It is the sense in which the concept is used in the Civil Jurisdiction and Judgments Act 1982, as well as in the original and revised Brussels Regulations (Nos. 44/2001 and 1215/2012) and in the original and revised Brussels II Regulations (Nos. 1347/2000 and 2201/2003). It is the sense in which Sir James Munby P considered an informal Indian adoption in the very recent case of *Re N* [2016] EWHC 3085 (Fam). When he says at [149] 'English law recognises N's Indian adoption by the applicant in October 2011' he does not mean that English law merely has regard to the Indian adoption. He means that the court accepts the adoption as valid and effective to alter N's legal status." *Mandic-Bozic, R. (on the application of) v British Association for Counselling and Psychotherapy* [2016] EWHC 3134 (Admin).

RECOVER. "'Recover' suggested, I agree, that the expenditure had taken place. The *Oxford English Dictionary*, over several pages, revealed that the flexibilities of the English language tended somewhat in his favour, but without being conclusive. 'Recover' has also been used to mean 'obtaining … judgment' making a sum or debt payable; *Morris v Duncan* [1899] 1 QB 4, to which Mr Gordon referred me. More importantly: was this heading of any weight? *Bennion on Statutory Interpretation* 6th ed at section 256 said that the heading to a section may be considered, but account had to be taken of the fact 'that its function is merely to serve as a brief, and therefore

possibly inaccurate, guide to the content of the section.' So the heading helps Mr Herberg, but not much. The limitations of reliance on headings were illustrated by the use of 'recovery of charges' in the heading to the repealed s18, which applied to pre-payment meters." *UK Power Networks (Operations) Ltd, R. (on the application of) Gas and Electricity Markets Authority* [2017] EWHC 1175 (Admin).

RECREATIONAL ACTIVITIES. "All these illustrations of recreational activities are consistent with the dictionary definition of recreation which is a means of refreshing or enlivening the mind or spirits by some pleasant occupation, pastime or amusement. The word originates from the Latin verb recreare meaning to refresh, restore, make anew, revive, invigorate. The Council submitted that the term 'recreation' had a broad meaning and the breadth of meaning was reinforced in sub-paragraph (v) by the addition of the words 'any form of recreation whatsoever'. I accept this submission." *Muir, R (On the Application Of) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin).

REFLECTS. "As already indicated, this turns on the use of the word 'reflect' in Article 6 of the 2010 Direction. As a matter of language it has a variety of meanings. A mirror reflects light by throwing it back without absorbing it. One can reflect on a problem by giving it careful thought and consideration. The judge thought that it meant something like reproduce or represent. Mr Fordham QC who appears for Vodafone, one of the interested parties, says that it should be read as meaning 'set by reference to' or 'based on'. Mr Saini QC for Ofcom accepts that if this or something equivalent is the correct meaning then his client has misinterpreted Article 6 of the 2010 Direction and will need to reconsider the licence fees it has set.... There is nothing in Ofcom's own consultation documents to indicate that its use of the word 'reflect' was intended to exclude the Article 8 considerations as a material factor in the setting of licence fees. AIP would be based on an assessment of the opportunity cost provided by the liberalised bands of spectrum but it would still be necessary for Ofcom to consider other regulatory factors in deciding how to apply its calculation of AIP when determining the level of fees.... The use of the term 'reflect' is not confined to Ofcom. The word is used in Article 13 of the Authorisation Directive (see [9] above) the French text of which uses the verb 'tenir compte' (take account of). It also features in the Impact Assessment published by the Secretary of State in connection with the making of the 2010 Direction which I deal with in [27]-[28] above. That recognises that Ofcom could still set revised licence fees 'to reflect the full economic value' and therefore reproduces the definition of AIP adopted by Ofcom in its own policy statement. It is, I think, therefore difficult to read Article 6 as anything but the adoption of the same definition of AIP using "reflect" in the same sense. The judge was, I think, wrong insofar as he held that 'reflect' should be given a different meaning." *EE Ltd v Office of Communications* [2017] EWCA Civ 1873.

REFOULEMENT. "The expression 'refoulement' refers to a principle which condemns the rendering of a victim of persecution to his or her persecutor. Generally, the persecutor in question is a state actor. The principle that a person should not be refouled is a fundamental tenet of international law relating to refugees which protects them from being returned or expelled to places where their lives or freedoms may be threatened." *Ibrahimi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin).

REFURBISHMENT. Stat. Def., Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 Sch.14 para.9(1)(h).

REGARD. See DUE REGARD.

REGISTRAR OF THE PROVINCE OF CANTERBURY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.28.

REGISTRAR OF THE PROVINCE OF YORK. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.28.

REGULARLY. "This case is all about the meaning of the word 'regularly' when describing the attendance of a child at school. Under section 444(1) of the Education Act 1996, if a child of compulsory school age 'fails to attend regularly' at the school where he is a registered pupil, his parent is guilty of an offence. There are at least three possible meanings of 'regularly' in that provision: (a) evenly spaced, as in 'he attends Church regularly every Sunday'; (b) sufficiently often, as in 'he attends Church regularly, almost every week'; or (c) in accordance with the rules, as in 'he attends Church when he is required to do so'. When does a pupil fail to attend school regularly? Is it sufficient if she turns up regularly every Wednesday, or if she attends over 90% of the days when she is required to do so, or does she have to attend on every day when she is required to do so, unless she has permission to be absent or some other recognised excuse?... In accordance with the rules 42. All the reasons why 'sufficiently frequently' cannot be right also point towards this being the correct interpretation. The Divisional Court was clearly worried about the consequence that a single missed attendance without leave or unavoidable cause could lead to criminal liability. However, there are several answers to this... This interpretation is also consistent with the provision in section 444(3)(a) and (9) that a child is not to be taken to have failed to attend regularly if he is absent with the leave of a person authorised by the governing body or proprietor of the school to give it. Unlike sickness or unavoidable cause, leave is not a defence. It is part of the definition of the offence. Your child is required to attend in accordance with the normal rules laid down by the school authorities for attendance but the school can make an exception in your case. As noted above, it is also consistent with section 444(3)(b).

47. There is another pointer in the link between the parent's obligation in section 7, to cause the child to receive 'full-time' education, and the offence committed under section 444(1), if the child fails to attend school regularly. 'Full-time' indicates for the whole of the time when education is being offered to children like the child in question.... I conclude, therefore, that in section 444(1) of the Education Act 1996, 'regularly' means 'in accordance with the rules prescribed by the school'. I would therefore make a declaration to that effect. To the extent that earlier cases, in particular *Crump v Gilmore* and *London Borough of Bromley v C*, adopted a different interpretation, they should not be followed." *Isle of Wight Council v Platt* [2017] UKSC 28.

RENTAL PERIOD. "We do not accept that a 'rental period' is synonymous with 'term' or 'duration'. We consider that in its everyday use this expression is understood to relate to the period in respect of which instalments of rent are due." *Falkirk Council v Gillies* [2016] ScotCS CSIH 90.

REPAIR. "This is an application for judicial review concerning the construction of the word 'repair' in an enforcement order (EN) issued by a planning authority against a developer who was in breach of planning regulations.... Words have meanings in their context. The meaning of even a familiar word will vary according to when it is used. In the context of a notice requiring the claimant to remedy a breach of planning regulations what repairs are necessary will depend on the extent of the breach. In this

case the entirety of the walls concerned had been rendered and painted and so any repair could well encompass them entirely.... the District Judge made no error in finding that 'Repair' encompassed rebuilding two walls, if necessary." *Hargrave House Ltd and Chaim Reiner v Highbury Corner Magistrates Court* [2018] EWHC 279 (Admin).

REPATRIATION. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

REPAY. "78. The argument for the Lead Claimants is based primarily on the structure and wording of section 80. They point out that subsections (1) to (6) are concerned with the crediting or repayment of undue VAT to the supplier, not the consumer. In subsection (7), the words 'credit or repay' echo the language of earlier subsections, where they can plainly refer only to the repayment or crediting of the supplier. They submit that subsection (7) is similarly concerned with the supplier. Only a supplier of goods or services can 'account' for an amount to the Commissioners, and only a supplier can be 'credited' with an amount by them. Similarly, only a supplier can be 'repaid' by the Commissioners, since only he has paid them in the first place. Section 80(7) is thus designed only to exclude claims, otherwise than under the section, by persons who have a claim under the section. That argument was accepted by the Court of Appeal.

79. On behalf of the Commissioners, it is argued that the word 'repay' is capable of applying to any payment back by the Commissioners of VAT which they have received. From their perspective, there is a repayment if the VAT is refunded, whether to the supplier or to someone else. Furthermore, it is argued, it would be strange if section 80(7) barred a restitutionary claim by the supplier, but left the supplier's customer in a better position. Moreover, it is argued, section 80 establishes a statutory scheme for the restitution of VAT which was not due, which by necessary implication excludes non-statutory restitutionary claims. The argument seeks to draw support from the decision of the Court of Appeal in *Monro v Revenue and Customs Comrs* [2008] EWCA Civ 306; [2009] Ch 69, where a common law claim was held to be excluded by a statutory scheme for the recovery of tax, since it would be inconsistent with the purpose of the scheme.

80. In agreement with the judge, I find the textual arguments inconclusive, when considered by themselves. The word 'repay' is capable of bearing a wider meaning than the one for which the claimants contend, but could also be construed more narrowly. A purposive construction of the provision points more clearly to the correct conclusion. In that regard, section 80(3) and (4) are particularly important." *Revenue and Customs v Investment Trust Companies* [2017] UKSC 29.

RESIDENCE. See ORDINARY RESIDENCE.

RETAIL PRICES INDEX. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

RETAILER. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

RETAINED CASE LAW. Stat. Def., "(a) retained domestic case law, and (b) retained EU case law" (European Union (Withdrawal) Act 2018, s. 6(7)).

RETAINED DIRECT EU LEGISLATION. Stat. Def., "any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after exit day)" (European Union (Withdrawal) Act 2018, s.20(1)).

RETAINED DOMESTIC CASE LAW. Stat. Def., "any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018, s.6(7)).

RETAINED EU CASE LAW. Stat. Def., "any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018, s.6(7)).

RETAINED EU LAW. Stat. Def., "anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018, s.6(7)).

RETAINED GENERAL PRINCIPLES OF EU LAW. Stat. Def., "the general principles of EU law, as they have effect in EU law immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018, s.6(7)).

RETROSPECTIVE PROVISION. Stat. Def., "in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made" (European Union (Withdrawal) Act 2018, s.20(1)).

RIGHT. See ENTITLEMENT.

RISK. Stat. Def. ("any reasonably identifiable circumstance or event having a potential adverse effect on the security of network and information systems"), Network and Information Systems Regulations 2018 reg.1.

RISK ASSESSMENT. Stat. Def., Space Industry Act 2018 s.9.

ROCKET. Stat. Def. ("a projectile of mainly cylindrical or similar shape that can be propelled from or above the earth by combustion of its fuel (or fuel and oxidant)"), Space Industry Act 2018 s.69.

ROOFING WORKS. "I reject the parties' respective submissions that the phrase 'roofing works' has a single meaning which is either restricted or not restricted to the roof covering as opposed to the structure supporting it. In my opinion the expressions 'roofing' and 'roofing works' are too general to have a single ordinary and natural meaning applicable in all cases where a construction contract requires to be interpreted. The meaning of 'roofing works' in a particular clause of the contract must depend upon context, reading the contract as a whole. In the context of this contract I consider that the defender's interpretation is to be preferred. The best indication of the context in which the words are used seems to me to be the subdivision of the works, and in particular those comprised within the sub-contract works, into work packages. Within WP 2400, one finds in the General Pricing Summary separate prices for

preliminaries, structural steelwork, metal decking, roofing, and provisional sums. There is no doubt that the price for roof steel is included within structural steelwork and not roofing. It is not therefore surprising that when one proceeds from the General Pricing Summary to the Pricing Schedule, the items within WP 3600 (in a section entitled 'Cladding/Covering') include roof coverings, but do not include roof steelwork. A similar categorisation can be found in sub-contract document 4100 ('Scope of Works') which includes, within the pursuer's works, WP A2400 (steel frame), WP B2400 (main roof steel) and WP 3600 (roofing to main roof). Again the expression 'roofing' excludes the roof steel." *Martifer UK Ltd v Lend Lease Construction (EMEA) Ltd* [2016] ScotCS CSOH 66.

RUNNING COUNTY LINES. See CUCKOOING.

S

SATISFIED. "A second consideration is the wording of the test itself, and comparison with the wording of other provisions, such as those concerned with orders of an emergency character. In that regard, the most significant terms—'satisfied' and 'likely'—are common to both the Scottish and the English provisions. In particular, as Lord Nicholls observed in *In re H* at pp 585–586, the need for the court to be judicially 'satisfied' is an indication that unresolved doubts and suspicions cannot form the basis of the order, and can be contrasted with the statutory language used where suspicion may be enough (as, for example, in relation to orders under sections 35 and 37 of the Children's Hearings (Scotland) Act 2011). It also indicates that the burden of proof rests on the party seeking the order." *EV (A Child), Re (Scotland)* [2017] UKSC 15.

SCREENING OPINION. "The term 'screening opinion' is a term which appears in the 2011 Regulations. In regulation 2 it is defined as meaning "a written statement of the opinion of the relevant planning authority as to whether development is EIA development". The same regulation defines 'EIA development' as being development which is either 'Schedule 1 development' or 'Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location'. The references to Schedule 1 development and Schedule 2 development are references to Schedules 1 and 2 of the 2011 Regulations." *Crematoria Management Ltd, R (On the Application Of) v Welwyn Hatfield Borough Council* [2018] EWHC 382 (Admin).

SEA. Stat. Def., Space Industry Act 2018 s.69.

SERVICE. "For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words 'serve' and 'on', constitute 'service' on 'the owner' 'by the authority'." *UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430.

SETTLED ACCOMMODATION. "The term 'settled accommodation' is not a statutory term, but has arisen in a series of cases concerning the ability of an individual, who has been intentionally homeless, to break the chain of causation by the intervention of a period in, what was first described by Ackner LJ, in *Din v Wandsworth BC* (June 23, 1981 unreported), as a 'settled residence'. That case, and those that have followed it, made it clear that, 'What amounts to "a settled residence" is a question of fact and degree depending upon the circumstances of each individual case.'

Those representing the defendant have brought to my attention, *Knight v Vale Royal RBC* [2003] EWCA Civ 1258, whilst those representing the claimant have brought to my attention, *Huda v Redbridge LBC* [2016] EWCA Civ 709. It seems to me that, as

both of these cases are consistent in their approach to the law, and only differ in their conclusions on the facts, neither are of particular persuasive value; whilst the latter considered that the precarious nature of a licence entitled the reviewing officer to determine that the accommodation was not settled despite being occupied for a period of two years, the former concluded that an assured shorthold tenancy was capable of being settled accommodation, despite being able to be determined at the end of six months.

Whilst the allocation of social housing under the 2015 scheme is based upon the number of points awarded to individuals who fulfil certain criteria, I do not consider that this, of itself, is determinative of the meaning of the words 'settled accommodation'. The 2015 scheme is also a discretionary scheme involving evaluative judgments to determine the prioritisation of scarce resources, dependent upon an applicant's and others' particular circumstances; such that whilst an individual who is not in settled accommodation may be awarded 40 welfare points if a member of her household has a sufficient need for and fulfils the other criteria, if an applicant is already in what can properly be considered to be settled accommodation, then there would be no basis for awarding such points.

Therefore, although I accept that the inclusion of the words, 'settled accommodation' in the 2015 scheme, would undoubtedly include the provision of Part VI social housing, I do not consider that it is necessarily limited to such accommodation. On the contrary, I consider that, depending upon the circumstances, and as a matter of fact and degree, the provision of Part VII accommodation may also amount to settled accommodation; such that, if the Part VII is not settled accommodation, then this may lead to an award of 40 category C welfare points if the applicant's household includes someone with a need for such accommodation, whilst if the Part VII accommodation is settled accommodation, there would be no basis for an award of 40 category C welfare points." *R. (on the application of C) v London Borough of Islington* [2017] EWHC 1288 (Admin).

SHAM MARRIAGE. "In my judgment, there is a difference in principle between a 'sham marriage' and a 'marriage of convenience'. It is clear from the statutory definition that a sham marriage can only be established if there is no genuine relationship between the parties. Of course, a 'marriage of convenience' may also entail a marriage which is not genuine. Indeed, many such marriages of convenience will reflect that fact. However, the hallmark of a marriage of convenience is one that has been entered into, in the context with which we are concerned, for the purpose of gaining an immigration advantage. That follows, in my judgment, from Lord Bingham's acceptance in *Baiai* of the definition of a 'marriage of convenience' in Council Resolution 12337/97 which I set out earlier, namely that it is a marriage entered into 'with the sole aim of circumventing the Rules on entry and residence'." *Molina, R (On the Application Of) v The Secretary of State for the Home Department* [2017] EWHC 1730 (Admin).

SHARED GROUND LOOP SYSTEM. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

SICKNESS ABSENCE. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

SLOT. "The case concerns 'slots' at Luton and Gatwick airports. A 'slot' is essentially the right to use airport infrastructure, and in particular to move an aircraft from a terminal to a runway (or vice versa), at a specific airport at a specific time. The term is defined in article 2 of Council Regulation (EEC) No 95/93 of 18 January 1993

on common rules for the allocation of slots at Community airports ('the Slots Regulation') in these terms: 'the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation'." *Monarch Airlines Ltd, R (on the application of) v Airport Coordination Ltd* [2017] EWCA Civ 1892.

SOCIAL SUPPORT. See THE SECRETARY OF STATE FOR WORK AND PENSIONS AGAINST MMCK [2017] SCOTCS CSIH 57.

SOCIAL WORK PROFESSIONAL. Stat. Def., Data Protection Act 2018 s.204.

SOLAR COLLECTOR. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

SOLICIT. See CANVASS OR SOLICIT.

SOLICITOR ADVOCATE. "In the course of the appeal before this court, a question arose concerning the use of the term 'solicitor advocate' in the relevant legislation and rules.... The 2011 Rules amended the 2005 Rules by substituting 'counsel' for 'advocate' where that term had appeared in the latter rules. It also provided for the omission of the definition of 'advocate' which had been contained in rule 2 of the 2005 Rules. The 2011 Rules also provided that Schedule 1 to the 2005 Rules be amended and that Schedule 2 should be removed. The upshot of all this is that no reference to 'solicitor advocate' remains within the 2005 Rules. The relevant terms are simply 'counsel' or 'solicitor'. As regards the present appeal, therefore, this means that Mr Neville, when appearing for the appellant in the Crown Court, fell to be paid by the legal aid authorities as a solicitor and in no other capacity. A solicitor has rights of audience under section 50 of the 1978 Act but is not included in the expression 'counsel' for the purpose of calculating payment of legal aid, nor for the purpose of the two counsel provision in rule 4(3) of the 2012 Rules." *Maguire, Re Application for Judicial Review (Northern Ireland)* [2018] UKSC 17.

SOLVENCY. "'Solvency' is a word that can have various significations, but for present purposes we intend it to mean balance sheet solvency: a comparison of total assets and total liabilities, with a view to determining whether the overall value of the assets is adequate to meet the liabilities. 'Liquidity', by contrast, relates to the ability of a company or other trading entity to meet its debts as they fall due; it is generally dependent on cash flow." *Liquidators of Grampian Maclennan's Distribution Services Ltd Reclaiming Motion by, against Carnbroe Estates Ltd* [2018] ScotCS CSIH 7.

SOVEREIGN. "In all the circumstances, I do not consider that the Hearing Officer's finding that 'sovereign is a denomination of money' can be impugned. It had an evidential foundation and was one that could reasonably be reached.... The real question must, I think, be whether the fact that no one but RM can make sovereign coins for United Kingdom purposes means that the word 'sovereign' must be distinctive of its coins. I do not think it does. The Hearing Officer made unchallenged findings that 'the trade in gold commemorative coins is international in nature' (paragraph 62 of the Decision), that 'a small proportion of coins so-named [i.e. as "sovereigns"] have been produced outside of RM's control' (paragraph 62) and that '"sovereign" gold commemorative coins from, at least, the Isle of Man, Jersey, Gibraltar and/or Australia are also available in the UK' (paragraph 77). In fact, while sovereign coins from jurisdictions other than the United Kingdom commonly bear the word 'sovereign' (albeit, it may be said, with a word indicating the relevant country or

territory), United Kingdom sovereigns hardly ever have, and RM's promotional material usually involves 'the designation "sovereign" used in association with the name Royal Mint' (paragraph 34 of the Decision).... It seems to me, though, that matters such as those mentioned in paragraph 41 above provided a sufficient basis for the Hearing Officer's findings. There was plainly evidence indicating that there are non-United Kingdom 'sovereigns' which are traded in the United Kingdom as part of a trade which is 'international in nature'. In the circumstances, the Hearing Officer was entitled, in my view, to conclude (as he did) that 'the word sovereign alone did not guarantee the trade origin of such goods [i.e. gold commemorative coins] because it had become customary in the current language or in the bona fide and established practices of the trade' (paragraph 78 of the Decision)." *Royal Mint Ltd v Commonwealth Mint and Philatelic Bureau Ltd* [2017] EWHC 417 (Ch).

SPACECRAFT. Stat. Def., Space Industry Act 2018 s.2.

SPACEFLIGHT ACTIVITIES. Stat. Def., Space Industry Act 2018 s.1.

SPACEPORT. Stat. Def., Space Industry Act 2018 s.3.

SPRINGBOARD INJUNCTION. "The typical purpose of a springboard injunction is to deprive a Defendant of any head start they have obtained by improper use of information or other property belonging to the Claimant. In *QBE Management Services (UK) Ltd v Dymoke* [2012] EWHC 80 (QB) Hadden-Cave J reviewed the authorities on springboard injunctions and summarised the principles as follows:

240 First, where a person has obtained a 'head start' as a result of unlawful acts, the Court has the power to grant an injunction which restrains the wrongdoer, so as to deprive him of the fruits of his unlawful acts. This is often known as "springboard" relief.

241 Second, the purpose of a "springboard" order as Nourse LJ explained in *Roger Bullivant v Ellis* [1987] ICR 464 is 'to prevent the defendants from taking unfair advantage of the springboard which [the Judge] considered they must have built up by their misuse of the information in the card index' (at page 476G). May LJ added that an injunction could be granted depriving defendants of the springboard 'which ex hypothesi they had unlawfully acquired for themselves by the use of the plaintiffs' customers' names in breach of the duty of fidelity (at 478E-G). The Court of Appeal upheld Falconer J's decision restraining an employee who had taken away a customer card index from entering into any contracts made with customers.

242 Third, "springboard" relief is not confined to cases of breach of confidence. It can be granted in relation to breaches of contractual and fiduciary duties (see *Midas IT Services v Opus Portfolio Ltd.*, unreported Ch.D, Blackburne J 21/12/99, pp. 18-19), and flows from a wider principle that the court may grant an injunction to deprive a wrongdoer of the unlawful advantage derived from his wrongdoing. As Openshaw J explained in *UBS v Vestra Wealth* at paragraphs [3] and [4]:

"There is some discussion in the authorities as to whether springboard relief is limited to cases where there is a misuse of confidential information. Such a limitation was expressly rejected in *Midas IT Services v Opus Portfolio Ltd*, an unreported decision of Blackburne J made on 21 December 1999, although it seems to have been accepted by Scott J in *Balston Ltd v Headline Filters Ltd* [1987] FSR 330 at 340. In the 20 years which have passed since that case, it seems to me that the law has developed; and I see no reason in principle by which it should be so limited.

In my judgment, springboard relief is not confined to cases where former employees threaten to abuse confidential information acquired during the currency of their

employment. It is available to prevent any future or further economic loss to a previous employer caused by former staff members taking an unfair advantage, and 'unfair start', of any serious breaches of their contract of employment (or if they are acting in concert with others, of any breach by any of those others). That unfair advantage must still exist at the time that the injunction is sought, and it must be shown that it would continue unless retrained. I accept that injunctions are to protect against and to prevent future and further losses and must not be used merely to punish breaches of contract."

243 Fourth, "springboard" relief must, however, be sought and obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer: *Universal Thermosensors v. Hibben* [1992] 1 WLR 840 Nicholls V-C; see also *Sun Valley Foods Ltd v. Vincent* [2000] FSR 825 esp at 834.

244 Fifth, "springboard" relief should have the aim "simply of restoring the parties to the competitive position they each set out to occupy and would have occupied but for the defendant's misconduct" (per Sir David Nicholls VC *Universal Thermosensors v. Hibben* [1992] 1 WLR 840 at [855A]). It is not fair and just if it has a much more far-reaching effect than this, such as driving the defendant out of business [855A],

245 Sixth, "springboard" relief will not be granted where a monetary award would have provided an adequate remedy to the Claimant for the wrong done to it (*Universal Thermosensors v. Hibben* [1992] 1 WLR 840 at [855B]).

246 Seventh, "springboard" relief is not intended to punish the Defendant for wrongdoing. It is merely to provide fair and just protection for unlawful harm on an interim basis. What is fair and just in any particular circumstances will be measured by (i) the effect of the unlawful acts upon the Claimant; and (ii) the extent to which the Defendant has gained an illegitimate competitive advantage (see *Sectrack NV. v. (1) Satamatics Ltd (2) Jan Leemans* [2007] EWHC 3003 Flaux J). The seriousness or egregiousness of the particular breach has no bearing on the period for which the injunction should be granted. In this regard, it is worth bearing in mind what Flaux J, said at paragraph [68]:

"[68] I agree with Mr Lowenstein that logically, the seriousness of the breach and the egregiousness of the Defendants' conduct cannot have any bearing on the period for which the injunction should be granted – what matters is the effect of the breach of confidence upon the Claimant in the sense of the extent to which the First Defendant has gained an illegitimate competitive advantage. In my judgment, Mr Cohen's submissions seriously underestimate the unfair competitive advantage gained by the Defendants from access to the Claimant's 'customer list' and ignore, in any event, the impact (if the injunction were lifted) of actual or potential misuse of other confidential information such as volume of business or pricing information. It is important in that context to have in mind that the Claimant maintains in its evidence that all the information said to be confidential remains confidential." (emphasis added)

247 Eighth, the burden is on the Claimant to spell out the precise nature and period of the competitive advantage. An 'ephemeral' and 'short term' advantage will not be sufficient (per Jonathan Parker J in *Sun Valley Foods Ltd v. Vincent* [2000] FSR 825, 834)." *Aquinas Education Ltd v Miller* [2018] EWHC 404 (QB).

STATE. "By article 2(1)(b) [of para 1 of the United Nations Charter], 'State' is defined in broad terms, as meaning: (i) the State and its various organs of government; (ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that

capacity; (iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State; and (iv) representatives of the State acting in that capacity." *Belhaj v Straw* [2017] UKSC 3.

STATUTE BILL. "The concept of a 'statute bill' refers to a bill prepared in accordance with Section 64, delivered in accordance with Section 69 in respect of which there is a statutory entitlement of the client to seek assessment by the Court under Section 70. Whether a bill is a 'statute bill' must therefore be determined in accordance with the relevant statutory provisions, explained by authority where relevant." *Richard Slade And Company Solicitors v Boodia* [2017] EWHC 2699 (QB).

STATUTORY AUDITED ACCOUNTS. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

STATUTORY UNDERTAKER. Stat. Def., Space Industry Act 2018 s.69.

STEAM MEASURING EQUIPMENT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

STRANGLE. "The judge referred in his judgment, to the Oxford English Dictionary (OED) definition of 'strangle' to confirm the meaning in ordinary usage of a single English word, an approach he said he did not think was precluded; and to the two senses in which 'strangle' was defined in that dictionary. These were first: 'To kill by external compression of the throat' and second 'To constrict painfully (of the neck or throat)'. Mr Price does not submit that there is an invariable rule that dictionaries should not be referred to. But, he submits, there is a danger where one is considering the ordinary meaning of words that doing so can lead to an overly literal approach, without regard to context, and this is what occurred in this case. The context here was one of domestic abuse, where strangulation in the second sense is often encountered, something of which it would be appropriate, he submits, to take judicial notice, when resolving this aspect of the appeal." *Stocker v Stocker* [2018] EWCA Civ 170.

SUBORDINATE LEGISLATION. Stat. Def., ("means—

(a) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under any Act, or

(b) any instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales, and (except in Schedule 2 or where there is a contrary intention) includes any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made on or after exit day under any retained direct EU legislation") – European Union (Withdrawal) Act 2018, s.20(1).

Stat. Def., Data Protection Act 2018 s.205.

SUBSTANTIAL. "27. The admirably concise submissions of Mr Etherington QC for the appellant correctly point out that as a matter simply of dictionary definition, 'substantial' is capable of meaning either (1) 'present rather than illusory or fanciful, thus having some substance' or (2) 'important or weighty', as in 'a substantial meal' or 'a substantial salary'. The first meaning could fairly be paraphrased as 'having any effect more than the merely trivial', whereas the second meaning cannot. It is also clear that either sense may be used in law making. In the context of disability discrimination, the Equality Act 2010 defines disability in section 6 as an impairment which has a substantial and long-term effect on day to day activities, and by the interpretation section, section 212, provides that '"Substantial" means more than minor or trivial.' It thus uses the word in the first sense. Conversely, the expression

'significant and substantial' when used to identify which breaches by the police of the Codes of Practice under the Police and Criminal Evidence Act 1984 will lead to the exclusion of evidence (see for example *R. v Absolam* (1988) 88 Cr App R 332 and *R. v Keenan* [1990] 2 QB 54) is undoubtedly used in the second sense. It is to be accepted that the word may take its meaning from its context. It is not surprising that in the context of triggering a duty to make reasonable adjustments to assist the disabled, the first sense should be used by the Equality Act; the extent of adjustments required varies with the level of disability and a wide spectrum of both is to be expected. Mr Etherington additionally submits that this usage shows that the first sense does not entirely strip the word 'substantially' of meaning." *R. v Golds* [2016] UKSC 61.

SUBSTITUTION. "For the purposes of section 35(6)(a) of the 1980 Act and CPR Part 19.5(3)(a) the question was whether the judge could be satisfied that the Firm was 'substituted' for the Company which had originally been named in the Claim Form as defendant in mistake for the Firm. These provisions draw a clear distinction between addition, on the one hand, and substitution on the other. The ordinary meaning of the word substitution connotes the replacement of one person or thing by another. As Pearce LJ observed in *Davies v Elsby Brothers* [1961] 1 WLR 170 at 173, when considering the substitution of a party permitted under the rules in different circumstances, 'substitution involves the addition of a party in replacement of the party that is removed.'" *Godfrey Morgan Solicitors (A Firm) v Armes* [2017] EWCA Civ 323.

SUCCESS. See REAL PROSPECT OF SUCCESS.

SULPHUR DIOXIDE. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

SUPPLY. "Certain further cases on the nature of a supply were cited by counsel for HMRC in support of the proposition that the existence of a contractual right to a service could demonstrate a supply for VAT purposes. We do not doubt that the existence of a contractual right may be an important indication that a supply has occurred. Nevertheless, in the light of the principles laid down in Card Protection Services we are of opinion that any contractual rights must be interpreted in the context of the whole circumstances of the individual case." *Findmypast Limited, Appeal by the Commissioners for Her Majesty's Revenue and Customs against a Decision of the Upper Tribunal in an Appeal by* [2017] ScotCS CSIH 59.

SUSTAINABLE DEVELOPMENT. "The Committee noted that no definition of sustainable development is provided in the bill or the accompanying documents and that this is consistent with the Land Reform (Scotland) Act 2016 and the Community Empowerment (Scotland) Act 2015. Organisations such as the National Farmers Union for Scotland (NFUS) and the Institute of Chartered Foresters expressed concern at the lack of clarity on the new powers for sustainable development. NFUS stated that it is not against the concept of sustainable development. However, reassurance is required and examples of how land will be managed for sustainable development would be helpful. It expressed a fear that if there are no clear limits to how land will be managed there is a risk that the concept of sustainable development could become contested and divisive in the longer term. The Scottish Government stated that it was a conscious decision not to define sustainable development in the bill. Officials argued that it is common to leave a term undefined in legislation, if that term is well understood and the ordinary meaning is suitable for the purposes of the legislation. It highlighted the court ruling by Lord Gill which stated that—. . .the expression

sustainable development is in common parlance [...]. It is an expression that would be readily understood by the legislators, the Ministers and the Land Court 16 The Scottish Government also directed the Committee to the Policy Memorandum for the relatively recent Land Reform (Scotland) Bill, which it believed to contain a useful working definition of the term— Sustainable development is defined as development that is planned with appropriate regard for its longer term consequences, and is geared towards assisting social and economic advancement that can lead to further opportunities and a higher quality of life for people whilst protecting the environment. Sustainable development requires an integrated approach to social, economic and environmental outcomes.

The Committee acknowledges that it is not current practice to define 'sustainable development' in legislation. However, some stakeholders are clearly seeking clarity on the term and its use in relation to forestry. In a similar manner to the issue regarding the definition of 'sustainable forest management' the Committee recommends that the Scottish Government should make a clear commitment to include the current working definition of sustainable development in the Forestry Strategy." Scottish Parliament's Rural Economy and Connectivity Committee's Stage 1 Report on the Bill for the Forestry and Land Management (Scotland) Act 2018.

T

TAMPERING. "The term 'tampering' is not defined by the Road Traffic Act 1988. It bears its ordinary, everyday meaning. It clearly means something more than mere 'touching'. The *Oxford English Dictionary* defines tampering as 'interfering with something without authority or so as to cause damage'." *Js (A Child) v Director of Public Prosecutions* [2017] EWHC 1162 (Admin).

TEMPORARY ACCOMMODATION. "The phrase 'temporary' accommodation has been treated as meaning precarious rather than simply limited in time." *Doka v London Borough of Southwark* [2017] EWCA Civ 1532.

TESTING LABORATORY. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

TORTURE. For extensive discussion of the international definition of torture see *Medical Justice v Secretary of State for the Home Department* [2017] EWHC 2461 (Admin).

TRADE. "In view of the absence of a statutory definition, it is not surprising that a considerable body of case law has developed on the question of what constitutes a 'trade' within the meaning of the income tax legislation. Both the FTT and the Upper Tribunal quoted extensively from that case law. For present purposes, however, it is sufficient to concentrate mainly on the decisions of this court in the *Eclipse* and *Samarkand* cases, each of which post-dated the FTT Decision and the latter of which post-dated the UT Decision. As it happens, both cases concerned film schemes, although there were substantial differences between the schemes in *Eclipse* and *Samarkand*, and neither scheme bore any close similarity to the scheme in the present case.

The significance of the two cases, in my judgment, is that they provide an authoritative and recent re-statement of the principles which should be applied in deciding whether activities undertaken by a taxpayer constitute a trade for tax purposes. The passages of principal relevance are to be found in paragraphs [109] to [117] of the judgment of the court in *Eclipse*, delivered by Sir Terence Etherton C, and in paragraphs [43] to [50], and [59] to [63] of my judgment in *Samarkand*, with which David Richards and Arden LJJ agreed. It was common ground that, at least in this court, these are the principles which must now be followed, although I should record that Ms McCarthy reserved the right to argue in a higher court that Mr Degorce's activities in the 2006/07 tax year were inherently of a trading character, such that the FTT and the Upper Tribunal erred in law in considering them to be the composite acquisition of an income stream.

Although the passages to which I have referred need to be read in full, the following brief extracts are in my view of central importance. In *Eclipse*, the court said:

'111. ... It is necessary to stand back and look at the whole picture and, having particular regard to what the taxpayer actually did, ask whether it constituted a trade.

112. The Income Tax Acts have never defined trade or trading further than to provide that (in the words of TA 1988, s 832(1) which was applicable to the relevant tax year) trade includes every trade, manufacture, adventure or concern in the nature of trade. As an ordinary word in the English language "trade" has or has had a variety of meanings or shades of meaning. Its meaning in tax legislation is a matter of law. Whether or not a particular activity is a trade, within the meaning of the tax legislation, depends on the evaluation of the activity by the tribunal of fact. These propositions can be broken down into the following components. It is a matter of law whether some particular factual characteristic is capable of being an indication of trading activity. It is a matter of law whether a particular activity is capable of constituting a trade. Whether or not the particular activity in question constitutes a trade depends upon an evaluation of all the facts relating to it against the background of the applicable legal principles. To that extent the conclusion is one of fact, or, more accurately, it is an inference of fact from the primary facts found by the fact-finding tribunal.

113. It follows that the conclusion of the tribunal of fact as to whether the activity is or is not a trade can only be successfully challenged as a matter of law if the tribunal made an error of principle or if the only reasonable conclusion on the primary facts found is inconsistent with the tribunal's conclusion. These propositions are well established in the case law …

114. In *Marson v Morton* [1986] STC 463 at 470-471, [1968] 1 WLR 1343 at 1348-1348 Sir Nicolas Browne-Wilkinson V-C set out a list of matters which have been regarded as a badge of trading in reported cases. He emphasised, however, that the list was not a comprehensive statement of all relevant matters nor was any one of them decisive in all cases. He said that the most they can do is to provide common sense guidance to the conclusion which is appropriate; and that in each case it is necessary to stand back and look at the whole picture and, having regard to the words of the statute, ask whether this was an adventure in the nature of trade … The cases by reference to which the list was compiled are not sufficiently analogous to the facts of the present case to make the list of value in these proceedings.'

In *Samarkand*, I said at [59]:

'… At the most basic level, it is now clear from *Eclipse*, if it was not clear before, that the question whether what the taxpayer actually did constitutes a trade has to be answered by standing back and looking at the whole picture: see [111]. Although it is a matter of law whether a particular activity is capable of constituting a trade, whether or not it does so in any given case "depends upon an evaluation of all the facts relating to it against the background of the applicable legal principles": see [112]. It follows that it can never be appropriate to extract certain elements from the overall picture and treat them, viewed in isolation, as determinative of the issue. But that, in essence, is what Mr Furness [counsel for the taxpayers] is inviting us to do, when he says that the purchase and leaseback (or onward lease) of a film are inherently trading activities. There is no dispute that such activities are capable of forming part of a trade, and in many contexts the only reasonable conclusion would be that they did form part of a trade. But when the whole picture is examined, the conclusion will not necessarily be the same. The exercise which the FTT has to undertake is one of multi-factorial evaluation, and their conclusion can only be challenged as erroneous in point of law on *Edwards v Bairstow* grounds: see *Eclipse* at [113].

…

61. In the interests of clarity, it is important to distinguish between the evaluative exercise which the FTT has to perform, on the one hand, and the proposition that a taxpayer cannot be taxed by re-characterising what he has actually done as something else, on the other hand. Mr Furness submitted that the FTT were guilty of such a re-characterisation, but I am satisfied that they did not fall into an elementary error of this description. Their overall assessment of the commercial nature of the agreements as the payment of a lump sum in return for a series of six payments over 15 years … was not a crude conclusion based on an impermissible transformation of the taxpayers' activities into an economic equivalent, but rather a way of expressing the ultimate inference of fact which they drew from the totality of the primary facts which they had found.'

It is also important to note the warning which the court gave in *Eclipse* at [117]:

'Finally, on legal principles, it is elementary that the mere fact that a taxpayer enters into a transaction or conducts some other activity with a view to obtaining a tax advantage is not of itself determinative of whether the taxpayer is carrying on a trade: *Ensign Tankers (Leasing) Ltd v Stokes (Inspector of Taxes)* [1992] STC 226 at 241, [1992] 1 AC 655 at 677 (Lord Templeman).'

Lord Templeman was, to put it mildly, no friend of tax avoiders, so it is worth quoting from what he said in *Ensign Tankers* at 677:

'The production and exploitation of a film is a trading activity. The expenditure of capital for the purpose of producing and exploiting a commercial film is a trading purpose. By section 41 of the Act of 1971 capital expenditure for a trading purpose generates a first year allowance. The section is not concerned with the purpose of the transaction but with the purpose of the expenditure. It is true that Victory Partnership only engaged in the film trade for the fiscal purpose of obtaining a first year allowance but that does not alter the purpose of the expenditure.'" *Degorce v Revenue and Customs* [2017] EWCA Civ 1427.

TRADE PROCESSES. "The central issue in this appeal can be shortly stated. It is whether the air handling system used by Iceland Foods Limited ('Iceland') in its retail store at 4 Penketh Drive, Liverpool (the 'premises') is plant or machinery 'used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes' within the meaning of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 (the '2000 Regulations')…. I shall not repeat them, but it is important to understand that the scheme of the 2000 Regulations is that the plant and machinery described in the four scheduled Classes is rateable as part of the hereditament (see paragraph 2(a)(i)). Class 2 makes rateable certain plant and machinery used 'in connection with services to the hereditament'. It contains a general exception prefaced by the words 'other than', which is for 'any such plant or machinery which is in or on the hereditament and is used … in connection with services mainly or exclusively as part of manufacturing operations or trade processes'. Class 1 makes clear that plant and machinery used for generation, storage or transmission of power is rateable. Class 3 makes certain transportation and distribution equipment rateable. Class 4 concerns other specialist industrial equipment where it is or is part of a building or structure. Within Class 2 itself, the items of plant and machinery enumerated as rateable in Table 2 include all kinds of heating, cooling and ventilating, lighting, water supply, draining and hazard protection equipment. At first sight, therefore, it would seem that plant and machinery used to keep the air in a building within a particular temperature range would be 'used in connection with

services to the hereditament' and, therefore, rateable. Moreover, at first sight, the exception for 'plant or machinery … used in connection with services mainly or exclusively as part of manufacturing operations or trade processes' would seem to be directed towards services used as part of some manufacturing or process activity undertaken by the occupier on the hereditament.... It is not, in normal parlance, a trade process to apply 'a continuous treatment of refrigeration at all times using equipment to maintain food in an artificial condition where but for the refrigeration it would be rendered worthless'. If one removes the cumbersome wording, one can see that keeping food in its same frozen state so that it may be sold is not any kind of trade process. Once that is clear, all the other arguments fall away. I would, however, reiterate that the question is not whether the plant serves the hereditament or the tenant, but whether the plant is used in connection with services mainly or exclusively as part of a trade process. Retail warehouses undertake a trade but not normally any trade process, certainly not so far as keeping the shop or the equipment therein at an appropriate temperature is concerned. Mr Kolinsky places too much weight on the requirement that the plant is used in connection with services mainly as part of a trade process. That is a secondary control, but not a primary one. Service equipment will be rateable unless it is used as part of a trade process. Keeping Iceland's freezers cool is not, in my judgment, a trade process, properly so called." *Iceland Foods Ltd v Berry (Valuation Officer)* [2016] EWCA Civ 1150.

TRADE SECRET. Stat. Def. "information which—

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question, (b) has commercial value because it is secret, and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret"), Trade Secrets (Enforcement, etc.) Regulations 2018 reg.2."

TRADER. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

TRAVEL SERVICE. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

TRAVEL TICKET. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

TRAVELLING. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

TRAVELLING CIRCUS. Stat. Def., Wild Animals in Travelling Circuses (Scotland) Act 2018 s.3.

TRIBUNAL. Stat. Def., "means any tribunal in which legal proceedings may be brought" (European Union (Withdrawal) Act 2018, s.20(1)).

TRIGGER. "The judge was of course perfectly entitled to inform his judgment by reference to the dictionary definitions to which he referred. It has to be remembered, however, that dictionary definitions are acontextual, and those responsible for formulating them are unlikely to have had the patentee's specific purpose in mind. In an appropriate context the words 'trigger' and 'mechanism' can have a meaning which is wider than the purely mechanical. I have no doubt that a gun in which the trigger operates a switch in an electric circuit which in turn releases a striker can properly be regarded as having a trigger mechanism.

In the present case the skilled person would understand from the description and drawings that the trigger mechanism includes more than just the trigger (shown as 22 in the drawings). It includes the parts downstream which react to the activation of the

trigger and which lead to the activation of the drive mechanism. As far as the trigger itself is concerned, the claim specifies that it must extend from the front face of the housing. The passage at page 1 line 34 to page 2 line 2, in the general description of the invention, explains the purpose of the trigger being configured in this way. It is so that it can be simply activated by applying pressure against the surface of the target, which occurs on contact with the target. Whilst this is suggestive of a mechanical trigger, it is also consistent with the trigger being a pressure sensor or indeed an electrical push button, both of which would need to be positioned so as to facilitate easy contact with the target. These would all be 'a small device that releases a spring or catch and so sets off a mechanism" in accordance with the dictionary definition.' *Saab Seaeye Ltd v Atlas Elektronik GmbH* [2017] EWCA Civ 2175.

TURNOVER. Stat. Def., Data Protection (Charges and Information) Regulations 2018 reg.1.

TWITTER. "Twitter is an online news and social networking service, which is widely used and very well known. It allows people using the Twitter website or a mobile device app to post and interact with messages of not more than 140 characters, called 'tweets'. This much is common knowledge. But Twitter is still a relatively new medium, and not everyone knows all the details of how it works. Where something is not a matter of common knowledge a judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved. In this case, however, many of the relevant facts about Twitter have been agreed, and set out in a Schedule called 'How Twitter Works', which is attached to this judgment as an Appendix. I shall employ the abbreviations used in the Appendix." *Monroe v Hopkins* [2017] EWHC 433 (QB).

U

UK HEALTH SERVICE HOSPITAL. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

UNAVOIDABLE AND EXTRAORDINARY CIRCUMSTANCES. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

UNBRANDED GENERIC HEALTH SERVICE MEDICINE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

UNDERTAKING. "There is no definition of 'undertaking' in the 1977 Act nor, in my view, is one really necessary. As a matter of language, the word can describe the company or other entity which employs the inventor either in terms of its organisational structure or simply as an economic unit." *Shanks v Unilever Plc* [2017] EWCA Civ 2.

UNDESIRABLE. "Turning to the meaning of the term 'undesirable' in this context I am satisfied that it is a word that calls for an exercise of planning judgment. I have reached that conclusion since it is an adjective with a potentially broad meaning and purview, used within the context of an approval process in planning legislation. The planning judgment to be made arises in the context of the qualified entitlement that Class Q creates and the purpose for establishing that qualified entitlement set out above. Given that conclusion, an error of law could only arise if that planning judgment were affected by one of the traditional public law grounds of challenge. I would not accede to Ms Clutten's submissions in so far as she seeks to argue that the term 'undesirable' is (like the noun 'eaves' in the *Waltham Forest* case) a word requiring an elaborate legal definition. It is a term which calls for a planning judgment from the decision-maker framed by the particular context in which it arises, namely that this is an application for prior approval of a form of permitted development created for the purpose of increasing the supply of housing, and not an application for planning permission. In my view it is perfectly reasonable to expect that this planning judgment will be reached against the backdrop of the purpose for creating this class in the first place." *East Hertfordshire District Council v Secretary of State for Communities and Local Government* [2017] EWHC 465 (Admin).

UNITED KINGDOM. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

UNIVERSITY. See COLLEGE, SCHOOL OF HALL OF A UNIVERSITY.

UNJUST. "The meaning of the words 'unjust' and 'oppressive' were considered by Lord Diplock in relation to the very similar provision in s.8(3) of the Fugitive Offenders Act 1967 in *Kakis* at 782: '"Unjust" I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into account; but there is room for overlapping and

between them they would cover all cases where to return him would not be fair."' *Pillar-Neumann v Public Prosecutor's Office of Klagenfurt* [2017] EWHC 3371 (Admin).

UNLAWFUL. "First, as a matter of the ordinary use of language it seems to me unnatural to describe a person's presence in the UK as 'unlawful' (which is not necessarily the same as not being 'lawful') when there is no specific legal obligation of which they are in breach by being here and no legal right to remove them—and all the more so where they have, as the Appellant did from the ages of four to 23, an absolute right at any time to acquire British nationality simply by making the necessary application." *Akinyemi v Secretary of State for the Home Department* [2017] EWCA Civ 236.

UPLINK FREQUENCIES. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

URBAN DEVELOPMENT PROJECT. "The phrase 'urban development project' is not defined within the Regulations. Within column 1, Box 10, of the Table the phrase includes 'the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas'. It is not suggested that the phrase 'urban development project' is limited to these types of development and I have no difficulty in accepting that the types of development set out in Box 10 are illustrative only. How then is the phrase to be interpreted and applied? Detailed guidance in relation to that issue is to be found in the decision of the Court of Appeal in *R (Goodman) v London Borough of Lewisham* [2003] Env. L.R. 28. The relevant facts were these. The Claimant was a resident affected by the proposed redevelopment of a site having an area of 5540 m^2 for the construction of a warehouse and self-storage blocks. He sought judicial review of the Defendant's grant of planning permission for the development on the grounds that the local planning authority had erred in determining that the development did not require an environmental impact assessment. The basis of his claim was that the proposed development constituted an 'urban development project' within predecessor regulations to the 2011 Regulations. At first instance the judge found that the local planning authority had been entitled to conclude that the proposed development was not an urban development project – it could not be said that its decision on that issue was irrational or perverse and, accordingly, the claim was dismissed." *Crematoria Management Ltd, R (On the Application Of) v Welwyn Hatfield Borough Council* [2018] EWHC 382 (Admin).

USE. "'Use' is not defined in the 1990 Act, but 'processing' is defined in section 2(1) to mean 'any operation involved in their [sc. gamete or embryo] preparation, manipulation or packaging, and related terms are to be interpreted accordingly'. Processes preparatory to use are not 'use' within the meaning of Schedule 3. In my judgment, thawing is such a process, because it is preparatory to the act of replacing the embryo. The Consent to Thaw form rightly refers to two matters, thawing and replacing, and in my opinion these are legally separate. It was therefore unnecessary under the 1990 Act to obtain ARB's written informed consent to the thawing of the embryo." *ARB v IVF Hammersmith Ltd* [2017] EWHC 2438 (QB).

USING. "If section 2 is considered alone, and bearing in mind that the 2007 Land comprised, in substance, the Second Site, in the present case the question that might have been posed to the Defendant after February 2006 is 'Are you using the old site of the School for the purposes of a public elementary school for children of and in the Parish of Nettlebed and adjacent parishes?' If 'using' is given a narrow meaning, the

answer to that question would be 'No', on the basis that premises which are empty are not 'used' for anything. In my view, however, taking a broad and practical approach to the question, the Defendant could equally legitimately answer it as follows: 'Yes, although the School has moved out of the old site and into new buildings on an adjacent site which now house a public elementary school for children of and in the Parish of Nettlebed and adjacent parishes, the old site is being sold to raise money to pay for part of the cost of the new buildings, and the old site is therefore being used 'for the purposes of' that public elementary school'." *Rittson-Thomas v Oxfordshire County Council* [2018] EWHC 455 (Ch).

V

VALID TRAVEL TICKET. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

VEHICLE. Stat. Def., Laser Misuse (Vehicles) Act 2018 s.3.

VESSEL. Stat. Def. ("includes any floating structure that is capable of being manned"), Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018 reg.2.

VETERINARIAN. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

VOUCHER. "Face-value voucher". Stat. Def., Proceeds of Crime Act 2002 s.303B(4)(c) inserted by the Criminal Finances Act 2017 s.15.

W

WELL. Stat. Def. (including borehole), Oil and Gas Authority (Offshore Petroleum) (Retention of Information and Samples) Regulations 2018 reg.1.

WHISTLE BLOWER. "The phrase 'whistle blower' plainly covers a range of situations." *Emblin, R (On the Application Of) v Revenue And Customs* [2018] EWHC 626 (Admin).

WILD ANIMAL. Wild Animals in Travelling Circuses (Scotland) Act 2018 s.2.

WiMAX SYSTEM. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

WITHDRAWAL AGREEMENT. Stat. Def., "an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU" (European Union (Withdrawal) Act 2018,s.20(1)).

WOMAN. Stat. Def., "'woman' includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female." Gender Representation on Public Boards (Scotland) Act 2018, s.2; Stat. Def., Gender Representation on Public Boards (Scotland) Act 2018 s.2.

WORKER. "The expression 'employed' is not defined by the EU Regulations, but the concept of 'worker' has been elucidated by the CJEU. An essential feature is that 'a person performs services for and under the direction of another person in return for which he receives remuneration' (Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] 2 CMLR 454). In other cases, where a person is not a worker but provides services, freedom of establishment is available." *Hrabkova v Secretary of State for Work and Pensions* [2017] EWCA Civ 794.

WORKING DAY. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2; Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2; Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

WORKING TIME. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

WORKS. "It is readily understandable that the draftsman considered that a 'canal' could be regarded as falling within the generic concept of 'works', or, in some circumstances at least, within the concept of 'cuts'. It is the use of the word 'dock' in the proviso which we think has particular significance, because this, in our view, indicates beyond sensible dispute that the draftsman understood that such a structure, or work, could otherwise fall within the meaning of 'works'. And it was surely for this reason that the proviso needed to embrace docks as well as locks, canals and cuts. If docks had not been encompassed within the concept of 'works' in the deeming provision, there would have been no need for the proviso to exclude certain docks from its ambit. That, it seems to us, is a cogent enough reason in itself, within a

conventional exercise in statutory interpretation, to sustain our understanding of the phrase 'locks cuts and works' in section 4 as including docks." *Environment Agency v Barrass* [2017] EWHC 548 (Admin).

WOULD. "Whilst accepting that the word 'would' may be used colloquially to express a conclusion based in chance, the context in which we must interpret it is not an everyday colloquial one, but one which underpins the test applied by the ET in assessing the appellant's loss." *Malcolm v Dundee City Council* [2017] ScotCS CSIH 32.

WRONGED. "Whether a service person has been 'wronged' is a different matter than whether he is the victim of a legal wrong. The concept is broader and more diffuse than that. Correspondingly the decision-makers at the various levels have to make a judgment as to how to approach the complaint and how to determine whether the complaint of being 'wronged' is 'well-founded'. While the decision-makers have some latitude and discretion as to how to approach their task, it is not limitless and they cannot do so in a way which no reasonable decision-maker could." *Ross v Secretary of State for Defence* [2017] EWHC 408 (Admin).